



Scottish Information
Commissioner

**Decision 130/2006 Mr Paul Hutcheon of The Sunday Herald
and the Scottish Executive**

*Request for details of every meeting held in 2004 between Scottish
Ministers and Scottish MPs, including minutes, dates and locations*

**Applicant: Mr Paul Hutcheon
Authority: Scottish Executive
Case No: 200500956
Date of Decision: 29 June 2006**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 130/2006 – Mr Paul Hutcheon of The Sunday Herald and the Scottish Executive

Request for details of every meeting held in 2004 between Scottish Ministers and Scottish MPs, including minutes, dates and locations – information provided with the exception of the minutes relating to one meeting – information withheld under section 29(1)(a) of the Freedom of Information (Scotland) Act 2002 – formulation or development of government policy – information withheld under section 30(b)(ii) – whether disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.

Facts

Mr Hutcheon asked the Scottish Executive for details of every meeting held in 2004 between Scottish Ministers and Scottish MPs, including minutes, dates and locations. The minutes of a meeting held between the Minister for Health and Community Care and Scottish MPs were withheld from Mr Hutcheon under sections 29(1)(a) and 30(b)(ii) of the Freedom of Information (Scotland) Act 2002, on the grounds that the information contained in the minutes relates to the formulation or development of government policy and disclosure would inhibit substantially the free and frank exchange of views for the purposes of deliberation.

Mr Hutcheon was dissatisfied with the response he received from the Scottish Executive to his initial request and to his subsequent request for review. He then submitted an application for a decision by the Scottish Information Commissioner in order to obtain the information he had been denied.

Outcome

The Commissioner found that the Scottish Executive had not acted in accordance with FOISA in applying the exemption contained under section 29(1)(a) to the information requested by Mr Hutcheon and did not accept that the Scottish Executive's application of the exemption under section 30(b)(ii) of FOISA had been justified in relation to the information requested by Mr Hutcheon.



The Commissioner found that by refusing to release the information, the Scottish Executive had failed to comply with the requirements of section 1(1) of FOISA and had accordingly not dealt with the request for information in line with Part 1 of FOISA. The Commissioner now requires the Scottish Executive to provide Mr Hutcheon with the information requested.

Appeal

Should either the Scottish Executive or Mr Hutcheon wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. On 5 January 2005, Mr Hutcheon wrote to the Scottish Executive (“the Executive”), asking to be provided with “details of every meeting held in 2004 between Scottish Ministers and Scottish MPs, including minutes, dates and locations”.
2. The Executive responded to Mr Hutcheon’s request on 2 February 2005, by providing a schedule of all the relevant meetings. In addition to the schedule, details were provided of two further meetings. Notes of one of the meetings - between the Minister for Transport and Scottish MSPs - were provided to Mr Hutcheon, whereas the minutes of the other meeting - held by the Minister for Health and Community Care on 25 October 2004 - were not disclosed.
3. In its response, the Executive stated that the contents of the minutes fell within the scope of the exemptions under sections 29(1) and 30(b)(ii) of the Freedom of Information (Scotland) Act 2002 (“FOISA”), on the grounds that:
 - (a) they relate to the formulation or development of policy; and
 - (b) release of the information would “substantially prejudice” (the correct test is “inhibit substantially”) the free and frank exchange of views for the purposes of deliberation.



4. The Executive also argued that the public interest in allowing free and open dialogue in confidence with Ministers on sensitive issues of this nature outweighs the public interest in ensuring transparency and accountability in the way in which public policy is developed.
5. Mr Hutcheon wrote to the Executive on 7 February 2005, seeking a review of its decision to withhold the minutes of the meeting.
6. The Executive replied on 10 March 2005, confirming that all of the information relevant to Mr Hutcheon's original request of 5 January 2005 had been considered in preparing the reply. It argued that it is in the public interest for Scottish Ministers to be able to hold meetings, as necessary, in private, for the purpose of formulating the policy of the Executive in order to ensure a frank exchange of views. It also added that in this case the public interest in protecting the privacy of those discussions outweighs the public interest in promoting better accountability and it concluded that the decision to withhold the information should be upheld.
7. Mr Hutcheon contacted my Office on 14 March 2005, stating that he was dissatisfied with the outcome of the Executive's review and applying to me for a decision in relation to the Executive's decision to withhold the minutes of the Health Minister's meeting. He believed that releasing the minutes would be in the public interest.
8. The case was then allocated to an investigating officer.

The Investigation

9. Mr Hutcheon's appeal was validated by establishing that he had made a valid request to a Scottish public authority, and had appealed to me only after asking the authority to review its response to his request.
10. A letter was sent to the Executive on 4 April 2005, giving notice that an appeal had been received and that an investigation into the matter had begun. The Executive was asked to comment on the issues raised by Mr Hutcheon's case and to provide supporting documentation for the purposes of the investigation.
11. On 18 April 2005, the Executive provided a copy of the minute withheld, comments in relation to the case, details of internal discussion and its internal review procedure, and further explanation of its use of the exemptions under FOISA and its consideration of the public interest test. Further information from the Executive was provided in response to specific request from the investigating officer on 22 and 26 July 2005 and 9 March 2006.



The Commissioner's Analysis and Findings

12. In its refusal notice to Mr Hutcheon, and in the subsequent review of its original decision, the Executive refused to disclose the information requested, citing exemptions under section 29(1) and section 30(b)(ii) of FOISA. I turn first to the Executive's application of the exemption under section 29(1)(a) of FOISA.

Section 29(1)(a) – formulation or development of government policy

13. The Executive stated in its refusal notice that the contents of the minutes “fall within the scope of an exemption under section 29(1) of FOISA, on the grounds that this relates to the formulation or development of policy”. I have taken this to mean the exemption contained in section 29(1)(a) of FOISA.
14. In terms of section 29(1)(a) of FOISA, information held by the Scottish Administration is exempt information if it relates to the formulation or development of government policy. It should also be noted that section 29(2) of FOISA states that once a decision as to policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded, for the purposes of paragraph (a) of subsection (1), as relating to the formulation or development of the policy in question. Further, section 29(3) states that in determining any question under section 2(1)(b) of FOISA (the public interest test) as respects information which is exempt information by virtue of subsection (1)(a), the Scottish Administration must have regard to the public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to the taking of a decision.
15. The section 29 exemption in FOISA is sometimes referred to as a “class-based” exemption, a term which was adopted during the consultation process for the proposed Scottish freedom of information legislation to describe the scope of the exemption. The term suggests there is a presumption that this section of FOISA exempts any information from disclosure that falls into this class. However, as the Executive's internal guidance on exemptions under FOISA clearly states: “It is not the nature of the document itself that is determinative but the substance of the information contained within it.” Simply badging a document as a policy is not sufficient to bring the exemption into play. I discuss the requirements of section 29 in more detail at paragraphs 46 and 47 below.



16. The reasoning behind the section 29(1)(a) exemption in FOISA is to ensure that, where appropriate, Scottish Administration policy can be formulated and developed effectively by allowing the Administration to discuss matters in a candid and frank manner. The section 29(1)(a) exemption is a qualified exemption, which means that even if the exemption applies, the application of this exemption is subject to the public interest test contained in section 2(1)(b) of FOISA.
17. For information to fall under the section 29(1)(a) exemption in FOISA, it must relate to government policy, i.e. to the development of options and priorities for Scottish Ministers, who will subsequently determine which options should be translated into political action and when. The formulation of government policy suggests the early stages of the policy process where options are considered, risks are identified, consultation takes place and recommendations and submissions are presented to Scottish Ministers. The development of government policy suggests the processes involved in improving upon or amending already existing policy and could involve the piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
18. Having examined the information that has been withheld by the Executive in this case, and having considered all of the points advanced in its submissions, I am not satisfied that the information contained within the minutes relates to the formulation or development of government policy.
19. The meeting which took place on 25 October appears to have been instigated by the Minister for Health. The purpose of the meeting was clearly to discuss a specific proposal of another public authority which had aroused controversy. The effect of this, it was said, was to polarise debate away from a wider consultation on service changes on which the authority was consulting. According to the Scottish Executive, the Minister's intention was to allow a free and frank discussion of the issues in hand, and this assisted the authority to subsequently make its recommendations on its overall strategy
20. Having read the minutes and the submissions, it is clear to me that the Minister had taken the initiative to call a meeting to bring key stakeholders, which included some Scottish MPs, into the same room to allow them to air their views and concerns and from that seek agreement as to a way forward. In that respect he was providing problem-solving leadership.



21. However, this is not the formulation of government policy. The issue at hand was a policy or operational decision of the other public authority. It is a matter for that authority to determine its policy on the deployment of its resources and the provision of its services. The consequence of that specific decision was felt to be impacting upon a wider consultation which that authority was carrying out. Again, however, the decisions following that consultation would be taken by the authority. The involvement of the Minister does not automatically transform this process into one which is now the formulation or development of Scottish Administration policy.
22. The Scottish Executive argues that the information needs simply to relate to the formulation or development of Scottish Executive policy. That is true. But “relate to” must mean more than simply having some association with an area of activity which is devolved to the Executive. The Scottish Executive has policies on the delivery of services by the authority in question, but if all activity relating to the provision of those services was said to relate to that policy, then virtually all such activity could be said to fall within the exemption at section 29(1)(a), whether that information related to policy drafts or operational services and whether it was activity taken by the Executive or by the authority as a consequence of the Executive’s overall policy. I do not believe that is what is intended by section 29(1)(a) and I have taken the view that it must be read more narrowly as set out in paragraph 17 above.
23. In this case, the information barely makes mention of Scottish Executive policy. There is a brief mention of an aspect of Executive policy as being one of a number of external drivers. Thereafter, the contributions and discussion are almost exclusively related to the specific proposals of the authority regarding specific aspects of its services. There is also reference to the ongoing wider consultation by the authority regarding services. It is made clear that it would be inappropriate to pre-empt or second guess the outcomes of that consultation, which was not due to be discussed for some months. The outcomes of the 25 October meeting are extremely short term and relate to limited measures to be taken in the meantime by the authority.
24. In my view, then, this information does not relate to the formulation or development of Scottish Administration policy and so does not fall within the exemption at section 29(1)(a) as claimed by the Scottish Executive. As noted above, the section 29(1)(a) exemption of FOISA is a qualified exemption which means that even if the exemption applies, the application of this exemption is subject to the public interest test. I have found that the exemption does not apply and accordingly am not required to go on to consider issues of public interest. However, in this instance, I will consider the public interest issues as if, contrary to my findings, the exemption at section 29(1)(a) did apply, and I do this at paragraphs 45-68 below.
25. I will now go on to consider the Executive’s use of the section 30(b)(ii) exemption under FOISA.



Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

26. In its refusal letter of 2 February 2005, the Executive argued that disclosure of the information would “substantially prejudice” the future free and frank exchange of views for the purposes of deliberation in similar situations.
27. In order for section 30(b)(ii) of FOISA to apply, it should be noted, firstly, that the relevant test is one where the disclosure of the information would, or would be likely to, *inhibit substantially* (not *substantially prejudice*) the free and frank exchange of views for the purposes of deliberation. Secondly, it should be noted that although the Executive has not specified that the release of the information would be *likely to* inhibit substantially the free and frank exchange of views for the purposes of deliberation, the nature of its arguments are to that effect, and so I will also consider whether such inhibition is likely in this decision.
28. The exemption under section 30 of FOISA concerns prejudice to effective conduct of public affairs. Section 30(b)(ii) states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. As with the exemption in section 29(1)(a), the section 30 exemption is subject to the public interest test contained in section 2(1)(b) of FOISA.
29. In my view, the standard to be met in applying the harm test in section 30(b)(ii) is high. To qualify for such an exemption, public authorities must be able to show not only that the release of the information would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, but also that such inhibition would be of a substantial nature.
30. The Executive’s guidance to its staff on the application of section 30(b)(ii) points out that the word “inhibit” suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive.
31. In its letter of 18 April 2005, the Executive argued that if Ministers are unable to have discussions in confidence where the scope for flexibility and change from publicly-stated positions can be explored “in a reduced-risk environment” then “desired optimal policy outcomes might not be achievable, or might only be achievable at greater cost (not purely financial)”. The Executive stated that it considered that disclosure of the information “would substantially prejudice the future free and frank exchange of views, both internally and with third party stakeholders, for the purposes of deliberation in similar circumstances.”



32. The Executive added, in its letter of 9 March 2006, that release of the minutes in question would endanger the success of such meetings in future. It argued that, should the record of these discussions be disclosed, "it is likely that it would prove difficult to encourage similar meetings to take place in the future (whether between these individuals or others). It may also harm the Minister's future working relations with those who attended the meeting in question."
33. There appear to be two issues to be addressed in relation to these arguments.
34. Firstly, would disclosure mean that those individuals who took part in the meeting would or would be likely to be substantially inhibited from freely and frankly exchanging views for the purposes of deliberation in any similar meeting?
35. The nature of the meeting was such that it was attended by senior public representatives and senior officials. The manner in which they expressed their concerns as represented in the minutes was forthright, and not at variance with publicly expressed positions or views.
36. In general, I do not believe that they would be inhibited from making such comments or from participating in future such meetings if disclosure was made. However, the crucial factor in determining whether the Executive should have released this information in response to this specific request is the timing of the request by Mr Hutcheon. It is clear that the participants viewed the issues being addressed as being sensitive at that time, given the decisions about to be taken on specific service provision and the decisions to be taken by the authority on the wider consultation. The group agreed not to make public comments, save to say that the meeting was useful, until the authority came forward with additional information on the provision of specific services under discussion which the group intended to consider further at a later meeting.
37. In this case, the follow up activity agreed at the meeting was to have taken place in November long before Mr Hutcheon made his request, and so would not be affected by any disclosure. However, the conclusion of the wider consultation by the authority and decisions arising from it were not due to have taken place until a date after Mr Hutcheon's initial request, and request for review (although matters may well have been concluded by the time the review response was made.)



38. It seems to me the purpose of the meeting was to allow the Minister to hear the views from the key stakeholders and to encourage a course of action which would bring about resolution. That part of the process was completed before the request made by Mr Hutcheon. Ultimately, however, the decision of what plan would be put in place was a matter for the authority which would not be accomplished until after Mr Hutcheon's request for information and request for review.
39. Given that particular timeframe, I can see why the Executive, having seen an outcome secured apparently to the satisfaction of the stakeholders, takes the view that disclosure at that time would not be helpful and would not be welcomed by those who had participated as it would potentially reopen the debate at a point when or immediately after the final stage of decision making had been reached.
40. However, it seems to me that given the strength of feeling held by those present at the time of the meeting the prospect of future release would not have inhibited them substantially in a free and frank exchange of views.
41. The second issue is whether release would substantially inhibit others from participating in such meetings and expressing their views. However, disclosure of information on one occasion should not be regarded as setting a precedent for all other information of this type under similar circumstances. It is important for public authorities to treat each request for information on a case by case basis and the release of minutes relating to a meeting held between Scottish Ministers and Scottish MPs in one particular case should not be taken to imply that such information should routinely be released in future. The individual circumstances of each case must be taken into consideration and the public interest in each case assessed on its own merits.
42. The information in this case concerns a meeting which took place before FOISA was in effect. It is unlikely that the participants gave much thought to what would happen to any note of the meeting after 1 January 2005, when FOISA came into force. However, any similar meetings which took place following any disclosure of the withheld information in this case would be in the knowledge that FOISA has introduced a new regime regarding information held by public bodies and that, while an exemption provides for the free and frank exchange of views for the purposes of deliberation, participants should be aware that there is no guarantee that what they say would not be disclosed, especially if there is a public interest in disclosure. Furthermore, the types of participants present at this meeting, both public representatives and public officials, should be particularly aware of this. I do not accept that the release of this information of itself would have a "chilling" effect on future free and frank exchange.



43. I am of the opinion that there is nothing in the content of the minutes that could be considered so sensitive as to justify them being withheld on the basis that the release of the information would (or even would be likely to) inhibit substantially the free and frank exchange of views for the purposes of deliberation. In addition, I do not believe that there is anything which would have been likely to have been omitted from the discussion if it had been known at the outset that the minutes of the meeting would be the subject of an information request under FOISA.
44. I am therefore of the view that the Executive's application of the exemption under section 30(b)(ii) of FOISA was not justified in this instance. Since I am satisfied that this information is not exempt under section 30(b)(ii) of FOISA, I am not required to consider the public interest test in relation to the use of this exemption. However, I intend to do so below, as if, contrary to my findings, the exemption at 30(b)(ii) did apply.

The public interest test

45. Although I have found that neither of the exemptions at section 29(1)(a) or 30(b)(ii) applies, I wish to consider the public interest arguments as if, contrary to my findings, the exemptions did apply. The Executive has advanced public interest arguments supporting non-disclosure which encompass both exemptions.
46. Information is exempt by virtue of section 29(1)(a) if it falls into a particular class of documents; that is, where the information relates to the formulation or development of government policy. In considering the application of this exemption, the authority is not required to consider the significance of the content of the information or the effect of disclosure. This is in contrast to exemptions such as section 30(b)(ii), where the authority is obliged to consider not only whether the information is of a certain type or nature, that is that is, is it for the purposes of deliberation, but must also demonstrate that disclosure would "substantially inhibit" that interest. Therefore, the authority must consider the significance and sensitivity of the information as well as considering the harm resulting from or effect of disclosure.
47. In the case of section 29(1)(a) the information will be covered by this exemption simply if it relates to the development of government policy regardless of how routine or insignificant the information may be. The use of the term "relates" ensures that the application of section 29(1)(a) is so broad as to include even the most innocuous information.
48. As a result, there is clearly a two stage process that an authority relying on section 29(1)(a) must follow. That is:
- Does the information relate to the formulation or development of government policy?



- If yes, in all the circumstances of the case, is the public interest in disclosure of the information outweighed by the public interest in withholding it?
49. Given the class nature of section 29(1)(a), the second stage must involve consideration of the actual content of the information withheld, including its relative sensitivity and the effect of disclosure.
 50. The public interest test is set out in section 2(1)(b) of FOISA. This states that, as regards information which is exempt information by virtue of any provision of Part 2 of FOISA, a person's general entitlement to receive information under FOISA applies only to the extent that the provision does not confer absolute exemption and, in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
 51. Section 2(1)(b) of FOISA is worded in such a way as to assume that disclosure would be in the public interest rather than in withholding it. The test is that in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption. Therefore, it is for the authority to show why, on public interest grounds, the information should not be released. To proceed otherwise would leave us in a position where innocuous and non-sensitive information relating to policy formulation would rarely be released because no resounding public interest argument could be found to justify disclosure.
 52. In its submission to my Office, the Executive stated that the information which Mr Hutcheon had requested consisted of an internal note of a meeting which had been "of a particularly sensitive nature". Reference was made by the Executive to an agreement by those present that no public comment would be made for the time being and "other documentation in this area was explicitly marked as sensitive".
 53. It is important to draw a distinction between information which is judged to be politically sensitive and information which is, intrinsically, highly sensitive in nature because it deals with issues such as national security. In this case, the information could be held to fall under the former category. The degree of sensitivity which attaches to the minutes of the meeting should be assessed by reference to the contents of the minutes themselves, and the circumstances surrounding the policy discussion contained therein (on the basis that, contrary to my findings above, the discussion did relate to the formulation or development of government policy).



54. So far as the sensitivity of the information in this case is concerned, my reading of the minutes is that an agreement had been made by those present at the meeting that no public comments would be made until a certain paper had been discussed. This suggests to me that there was an expectation that public comments would in fact be made at a later date regarding the issues under discussion. It does not necessarily imply that the fact and nature of the discussions were particularly sensitive, but that an agreement had been reached that no premature public discussions about the meeting would take place. Even so, it was agreed, at the time, that participants could make reference to the meeting having taken place and the nature of the meeting even if the exact detail of the discussion was not to be gone into. From that point of view, I regard the information contained within the minutes as having a somewhat temporary sensitivity. (As I am only concerned with considering the information that has been withheld by the Executive and the information that has been provided to me for the purpose of this investigation, the reference by the Executive to other documentation explicitly marked as sensitive is not relevant to this particular case.)
55. The Executive stated that the meeting was held to discuss a public policy issue that was of significant local and national interest. It was argued that the issue was not concerned simply with the implementation of a stated policy, but had wider implications for the development of policy in this area. In its letter of 18 April 2005, the Executive maintained that “the issue being discussed, and the fact and nature of the discussions, were clearly sensitive.”
56. The issues to hand are largely local difficulties although, for the purposes of considering the public interest test, they are being regarded as having ramifications for the formulation or development of national health policies. The sensitivity of the information to my mind falls away to a great degree when those difficulties are resolved.
57. This appears to have happened at least by February 2005. It was argued that Mr Hutcheon’s request was made “whilst the topics discussed were still very much current and emotive issues” and that release may have delayed the resolution of matters and jeopardised a process which was then underway. Although Mr Hutcheon’s request for the minutes was made on 5 January 2005, the Executive’s review of his request (which the Executive received from Mr Hutcheon on 7 February 2005) was carried out on 10 March 2005.
58. In addition to the argument that release of information may have delayed or jeopardised a process which was underway, the Executive has also raised in its submissions an alternative argument. In its letter of 9 March 2006, in which it expanded upon the public interest arguments for withholding the information, the Executive argued that release of the information in this instance would “re-open a debate regarding a complex issue which has now been resolved.”



59. The Executive also argued that the services in question are an emotive issue and that such information could be used to raise public concerns unnecessarily.
60. It seems to me that what the Executive is arguing, if accepted, would make it highly unlikely that this or similar information relating to the formulation or development of policy would be released. Their argument is that whilst consideration of options and decision making regarding the policy was underway, the release of information would jeopardise this process, which is not in the public interest. Once the decision has been concluded, however, the Executive argues it would not be in the public interest to reopen the debate, especially it seems where the matter has actually been one of significant public debate.
61. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code) suggests that amongst the factors which may inform a decision about the public interest are the general public interest that information is accessible i.e. whether disclosure would enhance scrutiny of the decision-making process and thereby improve accountability and participation, and also whether disclosure would contribute on a matter of public interest.
62. Allowing that it is in the general public interest to have information and, so far as policy making is concerned, that there is a particular public interest in understanding how a policy decision has been arrived at (especially perhaps where the issue arouses strong public debate) then I need to test the arguments that public interest in withholding the information would outweigh the benefit of release. These should be particular to the information withheld and the circumstances in which the policy formulation or development is said to be taking place.
63. In my view, the Executive has not advanced a convincing argument. I have considered all the points made in their submission, but wish to raise in particular two strands of argument that disclosure would not be in the public interest.
64. The first is that if details of a confidential meeting are released then Ministers are denied space to have such discussions as participants would not contribute or be inhibited in their contributions. In this case, I do not see how this is so. As I have indicated previously, there was no agreement this was confidential meeting; participants were agreed that the worth of the meeting could be publicly acknowledged but should refrain from going into detail about what was agreed until a further consideration of a certain paper had taken place. It seems to me that the confidentiality, if any, was temporary.



65. I think it highly unlikely that release would have deterred the parties from participating in future such meetings. They were elected representatives and senior officials.
66. Nor would they be inhibited in their comments. The views of many of them were already well known, having taken public positions or having made public comment on the issues being addressed at the meeting and where these were reflected in the meeting they are temperately recorded.
67. The second strand is that the policy process would be jeopardised or delayed. Although the Executive sought to argue that that the issue was not concerned simply with the implementation of a stated policy, but had wider implications for the development of policy in this area, it seems to me that it had specific application to a particular local decision which was resolved by at least February 2005.

Conclusion

68. Accordingly, I find that even if the exemptions set out in section 29(1)(a) or section 30(b)(ii) did apply to this information, the public interest in releasing the information is not outweighed by the public interest in maintaining the exemptions.



Decision

I find that the Scottish Executive (the Executive) did not act in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA) in applying the exemption contained in section 29(1)(a) to the information requested by Mr Hutcheon.

I do not accept that the Executive's application of the exemption in section 30(b)(ii) of FOISA was justified in relation to the information requested by Mr Hutcheon.

I find that by refusing to release the information, the Executive failed to comply with the requirements of section 1(1) of FOISA and, in doing so, failed to comply with Part 1 of FOISA. I now require the Executive to provide Mr Hutcheon with a full copy of the minutes of the meeting held by the Minister for Health and Community Care on 25 October 2004.

I am obliged to give the Executive at least 42 calendar days in which to supply Mr Hutcheon with the information as set out above. In this case, I require the Executive to take these steps within 45 calendar days of the date of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
29 June 2006