

# Decision Notice



Decision 008/2013 Mr Ross Gilligan and the Scottish Ministers

Communications with Dr Matt Qvortrup

Reference No: 201200540

Decision Date: 21 January 2013

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

Mr Gilligan made two requests for information, on 28 October 2011 and 9 December 2011, in which he asked the Ministers to provide him with information from communications with Dr Matt Qvortrup, a Senior Lecturer in Comparative Politics at Cranfield University, acknowledged as a leading expert on referendums. Following a review, Mr Gilligan was not satisfied that he had been provided with all relevant information and took issue with other aspects of the Ministers' handling of the case. The Commissioner carried out an investigation. She was satisfied that by the end of the investigation the Ministers had identified and located everything they held and which fell within the scope of Mr Gilligan's requests, but she was not satisfied that they took adequate steps to establish this when dealing with those requests initially.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. During First Minister's Questions (FMQs) on 27 October 2011, in answering a question about the referendum on independence, the First Minister referred to a statement from Dr Matt Qvortrup.<sup>1</sup> Dr Qvortrup is a Senior Lecturer in Comparative Politics at Cranfield University. He is considered to be a leading expert on referendums.
2. The following day, Mr Gilligan wrote to the Ministers requesting (*inter alia*) the following:  
*Information contained in any communication or correspondence including, though not restricted to: emails, letters, memos, minutes or other electronic/hand written notes/logs of conversations or telephone calls between Scottish Government Ministers (including the First Minister) or officials (including Special Advisers) and [Dr] Matt Qvortrup.*

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<sup>1</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6926>



3. The Ministers responded on 29 November 2011, providing the contents of four emails. These were all from the period from 24 October 2011 up to FMQs on 27 October 2011: although no timeframe was specified in the request, from the terms of another request Mr Gilligan had submitted at the same time, the Ministers understood this to be the period in which he was interested.
4. Having received the letter of 29 November 2011, Mr Gilligan wrote to the Ministers again on 9 December 2011. He asked for confirmation that the information the Ministers had provided represented the full terms of email contact between Dr Qvortrup and the Scottish Government on 26 and 27 October 2011, seeking details of any subsequent or prior exchanges if this were not the case. He expressed a preference for being provided with copies of the actual communications exchanged on 26 and 27 October 2011, asking in addition for records of any other contact between Ministers or officials and Dr Qvortrup from 1 October 2011 to date (redacted where appropriate). Finally, he asked for clarification of a number of specific points relating to the information disclosed to him.
5. The Ministers responded to this subsequent communication, which it confirmed it was dealing with as a new request for information, on 10 January 2012. They provided information from two further emails (exchanged after FMQs on 27 October 2011) and confirmed that these, with the emails disclosed previously, “represent a full account of email contact between Kevin Pringle and [Dr] Qvortrup on 26 and 27 October 2011”.
6. In relation to Mr Gilligan’s request for records of other contact, the Ministers replied with reference to the decision of the Court of Session in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73*<sup>2</sup>. Noting that an information request could not be considered valid if it did not (in accordance with section 8(1)(c) of FOISA) describe the information requested, they advised that they considered this request to be “a general request for copies of documents etc. – which does not clearly identify the particular information you are looking for”. Consequently, they regarded the request as invalid and did not believe they were required to respond.
7. In response to Mr Gilligan’s request for clarification, the Ministers provided a description of “the sequence of events on 27 October and the Special Adviser’s role”.
8. Mr Gilligan wrote to the Ministers again on 27 January 2012, expressing dissatisfaction with the Ministers’ responses of 29 November 2011 and 10 January 2012. He expressed particular concern that he had not been provided with the additional emails (i.e. those disclosed with the letter of 10 January 2012) in response to his original request. He pointed out that he had specified no timeframe in the request of 28 October 2011. He also wished to challenge the Ministers’ refusal to provide copies of actual documents, suggesting that the versions released “omitted important and relevant information”.
9. The Ministers notified Mr Gilligan of the outcome of their review on 23 February 2012. They confirmed their original decision in respect of each request.

<sup>2</sup> <http://www.scotcourts.gov.uk/opinions/2009csih73.html>



10. On 20 March 2012, Mr Gilligan wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. The application was validated by establishing that Mr Gilligan had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

## Investigation

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12. On 19 April 2012, the Ministers were notified in writing that an application had been received from Mr Gilligan and were asked to comment on their determination that one of Mr Gilligan's requests was invalid. The Ministers advised that they were no longer taking this position, but considered the request likely to be covered by section 12 of FOISA, on the basis that the projected cost of compliance exceeded the prescribed sum of £600.
13. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA), with particular reference to the requirements of section 12 of FOISA. In response, the Ministers stated that they did not wish to rely on section 12 and had carried out a further search, on the word "referendum" (which they assumed to be the subject Mr Gilligan was interested in). The information disclosed by this search was provided to Mr Gilligan, but he remained dissatisfied that he had received all relevant information.
14. The investigating officer obtained Mr Gilligan's comments on his remaining areas of dissatisfaction and further correspondence followed between the investigating officer and the Ministers. The Ministers carried out additional searches (which they described), also providing comments on other aspects of their handling of the case.
15. The relevant submissions received from both the Ministers and Mr Gilligan will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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16. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the submissions made to her by both Mr Gilligan and the Ministers and is satisfied that no matter of relevance was overlooked.



17. In his application, Mr Gilligan highlighted his primary concern as being that there were reasonable grounds for believing that the Ministers held (or had held) further relevant information. In this connection, he believed the Ministers to have been unreasonable in assigning a timeframe to the request set out in paragraph 2 above. He also highlighted that certain information appeared to have been supplied to him in selected or edited form, rather than as whole documents. He did not accept that one of his requests should be considered invalid.
18. In all the circumstances, Mr Gilligan was not satisfied that the information disclosed during the investigation represented a full disclosure of all relevant information held by the Ministers. In this connection, he reiterated the points set out in the preceding paragraph.
19. Regarding the timeframe assigned to Mr Gilligan's request of 28 October 2011, the Ministers advised that this had been done because Mr Gilligan had expressed an interest in a specific period in another request contained within the same email. The Commissioner considers this approach to have been unjustified in this case. The other request referred to by the Ministers related to the same general subject matter as the request under consideration here, but was different in terms of the information being requested. Also, there was nothing in the request as set out to suggest that it should be limited to any particular period, nor that it should be read together with any other request contained within the same email. Having considered the request and all relevant submissions, the Commissioner finds it reasonable to presume that Mr Gilligan would have specified a period had he intended to limit the scope of the request in that way. As a consequence, the assignation of unnecessary limits to the scope of the request frustrated its proper handling under FOISA.
20. Given the Ministers' withdrawal of their contention that Mr Gilligan's request of 9 December 2011 was (in part) invalid, and in the absence of any submissions as to why the request should have been considered invalid, the Commissioner finds that this was not a conclusion the Ministers were entitled to reach.
21. As a result of the actions of the Ministers, as set out in paragraphs 19 and 20 above, the Ministers failed to take adequate steps to identify and locate the information Mr Gilligan had requested. As a consequence, they failed to deal with the request in accordance with section 1(1) of FOISA.
22. The Commissioner also notes the Ministers' subsequent contention, during the investigation, that it would be excessively costly to search for information where the request did not specify a timeline, subject matter or topic. This may be true in some cases, but clearly any search parameters must be tailored to address what the applicant in a particular case has actually requested. Here, she is pleased to note the Ministers' subsequent acknowledgement that Dr Qvortrup's relatively unusual name and the fact that he worked within a narrow academic field made the task of searching in this case quite straightforward. While it is unfortunate that this conclusion was not arrived at earlier, the Commissioner is satisfied that the Ministers carried out adequate searches by the end of the investigation, as a result of which Mr Gilligan was provided with all information held by the Ministers and falling within the scope of the request.



23. In reaching this conclusion, the Commissioner has noted Mr Gilligan's concern that he was provided with some information in the form of extracted text, rather than the full documents concerned. As she has advised Mr Gilligan, it follows from the *Glasgow City Council* decision cited above that she cannot normally require a Scottish public authority to supply copies of particular documents where she is satisfied that the information requested by the applicant has been disclosed in another form. In this case, it does not appear that any relevant information has been omitted from the communications in question. In any event, she accepts the Ministers' submission that the documents are no longer held in their original form.
24. While acknowledging Mr Gilligan's concern that certain information disclosed during the investigation may have been withheld deliberately at earlier stages in the handling of the request, taking account of the whole history of this case and all relevant submissions, she does not consider there to be any reasonable basis for pursuing this line of enquiry further and remains satisfied with the steps taken by the Ministers by the end of the investigation. However, the Commissioner would observe that while Scottish public authorities are not required to supply documents when responding to requests for the information in them, to do so is more likely to inspire confidence and trust that the applicant is being provided with a full response to his or her request. In this case, she can understand how the wider history of the Ministers' handling of this request might have led the applicant to lack confidence that all relevant information had been disclosed, the consequences of which were an appeal to her that might otherwise have been avoided.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Gilligan. In failing to take adequate steps to identify and locate the information Mr Gilligan had requested, the Ministers did not deal with the request in accordance with section 1(1) of FOISA.

Given the steps taken by the Ministers to identify and locate the relevant information during the investigation, the Commissioner does not require them to take any action in response to this failure.



## Appeal

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Should either Mr Gilligan or the Scottish Ministers wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Rosemary Agnew**  
**Scottish Information Commissioner**  
**21 January 2013**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...