

# Decision Notice



Decision 017/2012 Mr David Rule and the Scottish Ministers

Dinner at Bute House

Reference No: 201101916

Decision Date: 30 January 2012

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
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## Summary

Mr Rule requested from the Scottish Ministers (the Ministers) information regarding a specified dinner held at Bute House. The Ministers responded and provided a link to information published on the Scottish Government website. Following a review, as a result of which the Ministers provided further information, Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had provided all relevant information they held to Mr Rule. While finding a technical failure in the Ministers' handling of the request, he did not require the Ministers to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 21(1) (Review by Scottish public authority)

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. On 25 July 2011, Mr Rule wrote to the Ministers requesting all information they held regarding the News of the World dinner held at Bute House on 19 March 2009.
2. On 4 August 2011, the Ministers responded to Mr Rule's request (and also to a further request he had made on 12 July 2011, which is the subject of a separate investigation – reference 201102176). The Ministers referred to Mr Rule's requests of 12 and 25 July 2011 and provided a link to where information had been published on the Scottish Government website.
3. On 26 August 2011, Mr Rule wrote to the Ministers requesting a review of their decision. In particular, he did not believe the published information to be all the information he had requested.
4. Mr Rule did not receive a response to his requirement for review and, on 6 October 2011, wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



5. The application was validated by establishing that Mr Rule had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its failure to respond to that request. The case was then allocated to an investigating officer.
6. The investigating officer informed the Ministers in writing that an application had been received from Mr Rule regarding the Ministers' failure to respond.
7. As a result, the Ministers notified Mr Rule of the outcome of their review on 12 October 2011. The Ministers repeated that information was available on the Scottish Government website. The Ministers also informed Mr Rule (following a search of relevant records) that the only other information held related to the cost of the dinner. This information was provided to Mr Rule.
8. On 12 October 2011, Mr Rule wrote to the Commissioner's office, withdrawing his initial application, 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.
9. The application was validated by establishing that Mr Rule had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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10. Mr Rule's application to the Commissioner was based on his dissatisfaction that he had not been provided with all of the information held by the Ministers and falling within the scope of his request: specifically, he had only been provided with the total cost, rather than all the information they held relating to cost. He also expressed his dissatisfaction that the timescales set out in FOISA had not been adhered to, expressing broader concerns as to delays in dealing with his requests for information.
11. On 28 October 2011, the investigating officer notified the Ministers in writing that an application had been received from Mr Rule, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to explain the steps they had taken to identify and locate the information Mr Rule had requested.
12. The Ministers responded on 18 November 2011, providing submissions in support of their position that they had provided Mr Rule with all relevant information they held. They also commented on the technical aspects of their handling of the case.
13. The relevant submissions obtained from Mr Rule and the Ministers will be considered fully in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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14. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Rule and the Ministers and is satisfied that no matter of relevance has been overlooked.

### Technical Issues

15. The Commissioner will first of all consider the technical issues raised by Mr Rule, who complained that the Ministers failed to respond to his requirement for review within the timescales allowed.
16. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
17. Mr Rule's requirement for review was dated 26 August 2011. Given that the response to the requirement was dated 12 October 2011, the Commissioner finds that the Ministers failed to comply with section 21(1) of FOISA by not responding to it within the time allowed.
18. The Ministers did not accept, however, that (as Mr Rule had suggested) their failures in this respect were in any sense intentional. The Commissioner can find no evidence that they were, although he would note that the failure in this case was not an isolated instance. He is pleased to note, however, that the Ministers have identified a resourcing issue in the First Minister's Office and are putting an additional member of staff in place.
19. The First Minister's Office, while facing many highly important demands on its time and resources, is clearly in no sense exempt from the demands of FOISA or other statutory requirements. On the other hand, it will also be apparent from this and other cases that Mr Rule's many and sometimes overlapping requests can present certain challenges for a Scottish public authority, even if individually they may appear relatively straightforward.

### Information held by the Ministers

20. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions referred in section 1(6) are not under consideration in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
21. The Commissioner acknowledges that, were the Ministers to hold any recorded information on the cost of the dinner, other than the total cost already provided, then such information would fall within the scope of Mr Rule's request of 25 July 2011.



22. In their submissions to the Commissioner, the Ministers explained (with details) that they had carried out specific searches and enquiries in locating the information provided to Mr Rule. They confirmed that no further relevant information was held. The Commissioner is satisfied that these measures were adequate in the circumstances.
23. The Commissioner is therefore satisfied that the Ministers held no further information falling within the scope of Mr Rule's request, in addition to that provided to him in response to his requirement for review. Consequently, in respect of the information actually held, he is satisfied that the Ministers responded to the request in accordance with section 1(1) of FOISA.

## DECISION

The Commissioner finds that the Ministers partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Rule.

The Commissioner finds that by providing Mr Rule with the information held, the Ministers complied with Part 1 (and in particular section 1(1)). However, he also finds that the Ministers failed to comply with section 21(1) of FOISA by failing to respond to Mr Rule's requirement for review within the required 20 working days.

The Commissioner does not require the Ministers to take any action.

## Appeal

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Should either Mr Rule 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.

**Margaret Keyse**  
**Head of Enforcement**  
**30 January 2012**



## 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.

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- (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.

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##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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