

Decision Notice



Decision 018/2012 Mr David Rule and the Scottish Ministers

News International and communications with that media company

Reference No: 201102176

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www.itspublicknowledge.info

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Summary

Mr Rule wrote to the Scottish Ministers (the Ministers) requesting all information held by the First Minister's Office regarding News International and communications with that media company. The Ministers responded by providing a link to where this information had been published on the Scottish Government website. Following a review, as a result of which he was provided with further information, Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had partially failed to deal with Mr Rule's request for information in accordance with Part 1 of FOISA, in not responding to his requirement for review within the requisite statutory timescale. However, he also found that in supplying Mr Rule with all the information they held and which fell within the scope of his request, the Ministers had dealt with the request in accordance with Part 1.

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

Relevant statutory provisions and other sources

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

1. On 12 July 2011, Mr Rule wrote to the Ministers requesting all information held by the First Minister's Office regarding News International and communications with that media company.

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2. On 4 August 2011, the Ministers responded and explained that they had proactively released information held about meetings between the Ministers and media proprietors, editors and media executives. This information included meetings and correspondence with representatives of News International and News Corporation, and the Ministers provided a link to where the information had been published on the Scottish Government's website¹.
3. On 26 August 2011, Mr Rule wrote to the Ministers requesting a review of their decision. In particular, he drew the Ministers' attention to his view that the information released on the Scottish Government's website was not all the information requested.
4. Mr Rule did not receive a response to his requirement for review and, on 6 October 2011, he wrote to the Commissioner expressing his dissatisfaction and applying for a decision in terms of section 47(1) of FOISA.
5. The Ministers notified Mr Rule of the outcome of their review on 17 November 2011 and apologised for the delay in replying. They explained that all information about correspondence held by the Scottish Government and falling within the terms of Mr Rule's request had been published on 4 August 2011. However, in their response of 12 October 2011 to Mr Rule's requirement for a review in respect of a similar information request, the Ministers had provided additional information about the cost of a dinner held on 19 March 2009. As part of the review process, they had concluded that this information also fell within the terms of Mr Rule's request of 12 July 2011, and therefore should also have been provided. As the Ministers had already provided Mr Rule with this additional information (i.e. the cost of the dinner on 19 March 2009), they were satisfied that all the information held by them that fell within the scope of the 12 July request had now been released.
6. On 22 November 2011 Mr Rule wrote to the Commissioner's office, 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.
7. 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.

¹ <http://www.scotland.gov.uk/About/14944/proprietors-editors-execs>



Investigation

8. 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) 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 requested, with reference to various points made by Mr Rule in his application, and to explain its arrangements for managing correspondence received by the First Minister's Office.
9. Submissions were received from the Ministers in response to this request and, insofar as relevant, these will be considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all submissions made to him by Mr Rule and the Ministers and is satisfied that no matter of relevance has been overlooked.
11. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
12. The Ministers claim that they have now provided all the information falling within the terms of Mr Rule's request. They confirmed that no exemption was being applied to any information and that all relevant information held by the Ministers had been published on 4 August 2011.
13. In his application, Mr Rule raised no issue about the information accessible on the Government's website, other than whether it was all the information held by the Ministers that fell within his request. In his application, Mr Rule lists examples of information which, from his reading of the published information, he would expect to be held by the Ministers and would fall within his request (i.e. information he perceived to be missing from that published).
14. Mr Rule also questioned whether the information identified on review as falling within his request – the cost of a dinner held on 19 March 2009 – was the only information held in respect of this dinner. This is the subject of a separate investigation by the Commissioner (*Decision 017/2012 Mr Rule and the Scottish Ministers*).
15. To determine whether the Ministers dealt with Mr Rule's request correctly, the Commissioner must be satisfied as to whether, at the time they received Mr Rule's request, the Ministers held any further information (other than that referred to in the outcome of their review) which would fall within the scope of that request.



16. During the investigation, the Ministers were asked what searches or enquiries they carried out to ascertain what information was held, what resources were searched (and how) and which staff were consulted (and why).
17. The Ministers replied that an extensive search of their electronic Records Document Management system had been conducted across relevant policy areas with an interest in journalism and the media, and e-mail inboxes and diary information across all Ministerial offices had also been searched. Searches were conducted using key words such as 'News International' 'The Sun' and 'News of the World', and also using the names of editors and other employees or senior staff in the relevant media organisations – including those names listed in Mr Rule's application to the Commissioner.
18. The Ministers also explained that all correspondence and other information within the scope of the request held by the Scottish Government had been released in the proactive publication on 4 August 2011: that is, the publication of all contacts with media organisations (including News International) going back to August 2007.
19. Mr Rule's request was restricted to information held by the First Minister's Office. As the Ministers had informed Mr Rule that information was held by the First Minister's Office only for period of three months, it was thought useful to ask the Ministers to explain the arrangements for passing correspondence out from the First Minister's Office. The Ministers were also asked to explain whether (and on what basis) there were arrangements for retaining information within the First Minister's Office if, for example, the information related more to the functions of that office than to those of any other part of the Government.
20. In response, the Ministers referred to their searches, pointing out that these searches had not been restricted to information held by the First Minister's Office. Consequently, the three month retention issue was not relevant to this case.
21. The Ministers did, however, explain that policy staff dealing with the First Minister's Office were aware that his office received considerable amounts of correspondence, making it impossible for them to keep information for more than a three month period. Consequently, they were aware of the need to keep a record of documents and to save information into the electronic Records Document Management system as the three month period reached an end. The Ministers explained that there was no written policy dictating that this should happen, but as a general rule policy teams were required to keep the official record of information received and sent. The First Minister's Office could store information into the electronic Records Document Management system if they considered it would not fall under the remit of a defined policy area, and also had access to the FOI Tracker system (which contained a case file relevant to each request) and hard copy files where they could retain information if they considered it necessary (as could any area of the Scottish Government).
22. As indicated above, Mr Rule's application to the Commissioner set out examples of information he thought might be held and which he considered would fall within his request (but which had not been published). The Ministers were asked to address this, with reference to the points identified by Mr Rule.



23. The Ministers answered that they had recently conducted further searches of all information held in relation to similar requests from another requester. These searches had not identified any further information which would be within the scope of Mr Rule's request. In respect of certain points made by Mr Rule, the Ministers commented that it might be the case that letters received did not require a response, such as a letter thanking the First Minister for attending an event, or where the deadline for responding to an invitation was such that the response was provided by telephone. Also, there was no requirement to keep copies of attachments sent or received as attachments to correspondence if there was no policy or Scottish Government use for that information. They reiterated that they had published all information falling within the scope of the request.
24. As the Commissioner has stated in previous cases, the standard of proof to apply in determining whether a public authority holds information is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of any searches carried out by the public authority. He will also consider, where appropriate, any other reason offered by the public authority to explain why information is not held. Other matters may affect the Commissioner's view, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which has not been brought to light.
25. In this case, the Commissioner is satisfied that the Ministers conducted a reasonable assessment of whether they held any information. The Ministers' interpretation of the request was reasonable in this case and the searches detailed to the Commissioner – in terms of resources searched, keywords used, and personnel consulted – also appear reasonable and adequate in the circumstances. The Ministers have also commented with possible reasons why certain information (which they might have been expected to be held) was not held by them – again, these appear reasonable in the circumstances.
26. There can never be certainty that information might not be undiscovered within the records held by a public authority and fall within the terms of a request. On the basis of the above analysis, however, the Commissioner accepts, on the balance of probabilities, that the Ministers held no information falling within the scope of Mr Rule's request of 12 July 2011, other than that already supplied to Mr Rule.
27. Consequently, the Commissioner accepts that the Ministers identified, located and provided to Mr Rule all of the information they held and which fell within the scope of his request.

Technical issues

28. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of a requirement for review to comply with that requirement, subject to exceptions which are not relevant in this case.



29. The Ministers did not respond to Mr Rule's requirement for review of 26 August 2011 until 17 November 2011. Consequently, the Commissioner finds that the Ministers failed to deal with the requirement within the 20 working days required by section 21(1) of FOISA. As the Ministers have since conducted a review, the Commissioner does not require any action in respect of this technical breach.
30. The Ministers acknowledged their failure to provide a response to Mr Rule to his requirement for review within this timescale and apologised. They explained that there had been issues surrounding the monitoring, registering and allocating of information requests received into the First Minister's Office following the election in May 2011 and over the summer period, due to the volume of correspondence and requests directed at that office. They explained that the First Minister's Office was the busiest office in the Scottish Government and had to deal with a vast, wide-ranging subject base and numerous time consuming demands on staff time.
31. The Ministers assured the Commissioner, however, that to ensure that greater attention was given to information requests, a new staff member had joined the office team to monitor, register and ensure due attention was given to timescales for information requests.
32. The Commissioner is pleased to note that a resource issue has been identified in the First Minister's Office and is being acted upon. As noted in *Decision 017/2012*, the issue identified in this case was not an isolated one and 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.



DECISION

The Commissioner finds that the Scottish Ministers (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 the Ministers dealt with Mr Rule's request for information in accordance with Part 1 of FOISA, by supplying the information and by notifying Mr Rule that they held no further information falling within the scope of the request.

The Commissioner finds that the Ministers failed to comply with Part 1 of FOISA in dealing with the information request made by Mr Rule, in particular by failing to respond to Mr Rule's requirement for review within the timescale laid down in section 21(1) of FOISA.

Given that the Ministers have now responded to Mr Rule's requirement for review, the Commissioner does not require the Ministers to take any action in response to this failure.

Appeal

Should either Mr Rule or the Scottish Ministers (the 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

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.

...

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.

...