

Decision Notice



Decision 030/2012 Mr Tom Gordon of The Sunday Herald and the Scottish Ministers

Overnight guests at Bute House

Reference No: 201102130
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Scottish Information Commissioner

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Summary

Mr Gordon of the Sunday Herald requested from the Scottish Ministers (the Ministers) a list of all overnight guests at Bute House between 1 January 2011 and 6 July 2011. No response was received from the Ministers to Mr Gordon's request. Following a request for review, the Ministers notified Mr Gordon, in line with section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA), that they did not hold any information which would address his request. Mr Gordon was dissatisfied with this response and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had partially failed to deal with Mr Gordon's request for information in accordance with Part 1 of FOISA, in particular sections 10(1) and 21(1), in not responding to Mr Gordon's request and requirement for review within 20 working days.

However, the Commissioner found that, by providing Mr Gordon with a notice in terms of section 17 of FOISA that they did not hold any information which would address his request, the Ministers complied with Part 1.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance); 17(1) (Notice that information is not held); 21(1), (4) and (5) (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 6 July 2011, Mr Gordon wrote to the Ministers to request a list of all overnight guests at Bute House between 1 January 2011 and the date of the request. Mr Gordon explained that this list should include the name of each guest, the date of their stay, and whether this person was a guest of the First Minister or another Minister.

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2. Mr Gordon did not receive a response to his request, and on 10 August 2011 he wrote to the Ministers indicating that he interpreted their failure to respond as a refusal to provide the information he had requested. Mr Gordon asked the Ministers to carry out a review of that decision.
3. Mr Gordon did not receive a response to his request for review, and on 29 September 2011 he submitted an application to the Commissioner asking that he carry out an investigation into the Ministers' failure to respond to his request and requirement for review.
4. The Commissioner commenced an investigation into why the Ministers failed to respond to Mr Gordon's request and requirement for review within the timescales laid down in sections 10(1) and 21(1) of FOISA.
5. On 11 October 2011 (during that investigation), the Ministers provided a response to Mr Gordon's requirement for review, notifying him that they did not hold any information which would address his request. They explained that Bute House has a dual purpose as the official residence of the First Minister of Scotland and as a private residence. The Ministers went on to advise Mr Gordon that no official guests had stayed overnight in the period covered by his request. They added that very occasionally private guests of the First Minister have stayed overnight, but as these visits are private no official record is held.
6. Mr Gordon subsequently confirmed that he had received this response, and withdrew his application for decision of 29 September 2011 (which related solely to the technical matter of the Ministers failure to respond).
7. On 15 November 2011, Mr Gordon made a new application to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review, along with their failure to respond to his request and requirement for review within the timescales set down in sections 10(1) and 21(1) of FOISA, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Gordon 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

9. On 23 November 2011, the Ministers were notified in writing that an application had been received from Mr Gordon and were invited to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Ministers were asked to provide a detailed submission setting out the nature and breadth of searches that they carried out to determine whether any relevant information was held which would address Mr Gordon's request.



10. The Ministers were also asked to comment on the type of records that they hold regarding visitors to Bute House and whether there is any requirement or expectation that they should hold the type of information requested by Mr Gordon.
11. A response was received from the Ministers on 15 December 2011, which provided their submissions on why they considered that they held no information falling within the scope of Mr Gordon's information request. Further explanation and clarification was sought and received from the Ministers during the course of the investigation.
12. The Ministers were advised that submissions provided on 4 November 2011 (in the course of the previous technical investigation relating to Mr Gordon's request) would be considered in this decision when considering why they did not respond to Mr Gordon's request and requirement for review within the statutory timescale set out in sections 10(1) and 21(1) of FOISA.
13. The relevant submissions received from both the Ministers and will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Section 17 - Information not held

15. In this case, the Ministers, when responding to Mr Gordon's request for review, notified him that they did not hold the information he had requested. They explained that there had been no official overnight guests at Bute House in the period concerned, and that no information was held in relation to any private overnight guests.
16. Mr Gordon commented in his application that he did not accept the implication that Bute House is sometimes an official residence, sometimes a private residence and that guests are either official or private. Mr Gordon argued that Bute House is always an official residence – that is, a residence provided by the public purse for the First Minister of the day in Edinburgh.
17. He commented also that he found it strange that the Ministers were able to confirm that there had been private guests staying overnight at Bute House, but that there was no record of them. Mr Gordon considered that, in order to confirm that there had been guests, the Ministers must have some form of information about them, for example invitations that have been sent out inviting guests to stay overnight at Bute House, and thank you notes from those who have stayed over.
18. Mr Gordon also considered it incredible from a security perspective that no record has ever existed of who was staying at Bute House.

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19. 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.
20. Where a Scottish public authority receives a request for information that it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant that it does not hold the information.
21. In order to determine whether the Ministers dealt with Mr Gordon's request correctly, the Commissioner must be satisfied as to whether, at the time they received Mr Gordon's request, they held any information which would address his request.
22. The Ministers provided submissions outlining the searches that they carried out to determine whether any relevant information was held. They provided details of the searches that were carried out of both electronic and paper records which are held within various parts of the Scottish Government, together with the keywords that were used to facilitate the searches of electronic records.
23. The Ministers contended that if any information did exist with regard to any overnight guests staying at Bute House then it would have been identified during these searches. However, they indicated that no relevant recorded information which would address Mr Gordon's request was identified following these searches.
24. When asked why they were able to advise Mr Gordon, in the response to his requirement for review, that there had been no official guests who stayed overnight at Bute House between 1 January 2011 and 6 July 2011, the Ministers explained that records are kept of all official visitors to Bute House, and therefore, if there had been any official guests staying overnight, then a record would be held. The Ministers advised that no such record is held as there have been no official overnight guests at Bute House.
25. The Scottish Government does not, the Ministers submitted, keep a record of private guests who visit or stay at Bute House. The Ministers explained that this is in keeping with the practice of successive administrations. They provided background information about the relationship between the official use of the building (for meetings and events), and the provision of residential accommodation of the First Minister of the day.
26. In their submissions, the Ministers advised that no records are held of whether invitations have ever been sent out inviting guests to stay overnight and no records are held regarding any received 'thank you' cards or notes.
27. Security personnel are, the Ministers explained, informed on a daily basis of all visitors attending Bute House for meetings, and are always informed of official guests who visit Bute House. The Ministers also explained that security personnel are also informed of all non Scottish Government staff expected at Bute House daily. Information relating to non Scottish Government staff visiting Bute House is, the Ministers submitted, retained for two to three days and then disposed of.



28. Having considered all of the submissions received from the Ministers, the Commissioner is satisfied that the Ministers took adequate steps and carried out reasonable searches in this particular case to determine whether any recorded information was held regarding official and private guests who stayed overnight at Bute House in the time period 1 January 2011 to 6 July 2011. The Commissioner is satisfied, on balance, that the Ministers did not, at the time they received the request, hold any recorded information which would address Mr Gordon's information request.
29. The Commissioner therefore finds that the Ministers acted in accordance with Part 1 of FOISA by giving Mr Gordon notice in terms of section 17 of FOISA that they did not hold any information pertaining to his request.

Sections 10(1) and 21

30. Section 10(1) of FOISA allows Scottish public authorities a maximum of 20 working days after receipt of a request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
31. Mr Gordon made his information request by email on 6 July 2011, but the Ministers did not provide a response.
32. In their submissions to the Commissioner, the Ministers explained that the failure to respond to this request within the statutory timescale was an oversight, as this email, which was received at the same time as four requirements for review for requests on the same matter from Mr Gordon, was not identified as a new request for information.
33. The Commissioner finds that the Ministers failed to comply with the timescale required by section 10(1).
34. Section 21(1) of FOISA gives public authorities a maximum 20 working days following the date of receipt of the requirement to comply with the requirement for review, subject to exceptions which are not relevant to this case.
35. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision has been reached.
36. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
37. Mr Gordon submitted a requirement for review to the Ministers on 1 August 2011, but the Ministers did not provide a response to this until 11 October 2011.

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38. In their submissions, the Ministers accepted that Mr Gordon's requirement for review was not responded to within the timescales set down in section 21(1) of FOISA, and they apologised for this failure.
39. The Commissioner finds that the Ministers failed to comply with the timescale in section 21(1) of FOISA in responding to Mr Gordon's requirement for review.

DECISION

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

The Commissioner finds that by notifying Mr Gordon, in line with section 17 of FOISA, that they did not (and do not) hold any information which would address his request, the Ministers complied with Part 1 of FOISA.

However, in failing to provide any response to Mr Gordon's request and in not providing a response to his requirement for review within 20 working days, the Commissioner finds that the Ministers failed to comply with sections 10(1) and 21(1) of FOISA.

Given that a response to Mr Gordon's requirement for review was provided to him, the Commissioner does not require the Ministers to take any action in response to these failures.

Appeal

Should either Mr Tom Gordon 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
17 February 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.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but



(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

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.

...

(4) The authority may, as respects the request for information to which the requirement relates-

(a) confirm a decision complained of, with or without such modifications as it considers appropriate;

(b) substitute for any such decision a different decision; or

(c) reach a decision, where the complaint is that no decision had been reached.

(5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...