

# Decision Notice



Decision 053/2013 Mr Grieg Lamont and the Scottish Ministers

Handling of and failure to respond to an information request

Reference No: 201202531  
Decision Date: 26 March 2013

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

**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

On 5 October 2012, Mr Lamont asked the Scottish Ministers (the Ministers) for information about the First Minister's trip to the USA, which coincided with the 2012 Ryder Cup. The Ministers did not respond to the request, but provided the information to Mr Lamont in response to his request for review. Following an investigation, the Commissioner found that the Ministers had, at review, provided Mr Lamont with the information he requested. She also found that the Ministers failed to respond to Mr Lamont's request for information within the required 20 working days.

## Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance); 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 5 October 2012, Mr Lamont wrote to the Ministers, requesting the following information relating to the First Minister's trip to the USA in September-October 2012 (which coincided with the Ryder Cup):
  - a. A list of all individuals who accompanied the First Minister on the trip at taxpayers' expense (regardless of how small that expense might have been – including, for example, the use of taxpayer-funded cars, taxi-cabs etc.);
  - b. The role of each of these individuals during the trip;
  - c. A break-down of all costs incurred by the First Minister and those accompanying him, during the trip, providing as much detail as possible.
2. Mr Lamont received no response to his request for information.



3. On 29 November 2012, Mr Lamont wrote to the Ministers requesting a review in respect of their failure to respond. He stated that he would like an explanation of why it had taken the Ministers only 13 days to provide what he understood to be substantial proportions of the requested information to an MSP in a response to a Parliamentary Question<sup>1</sup>. He noted that 54 days had passed since he made his request to the Ministers and he had not been provided with any of the information.
4. Mr Lamont received a response to his requirement for review on 5 December 2012. This provided him with information addressing all three parts of his request. The following day, he wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' handling of his request 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 Lamont 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

---

6. The investigating officer contacted the Ministers on 19 December 2012, 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 line with Mr Lamont's application, the Ministers were asked to provide details of the searches they had undertaken for the information requested by Mr Lamont. They were also asked to comment on their handling of the request, with particular reference to timescales for compliance.
7. The relevant submissions received from both the Ministers and Mr Lamont will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

---

8. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Lamont and the Ministers and is satisfied that no matter of relevance has been overlooked.
9. The Commissioner will first address Mr Lamont's dissatisfaction with the Ministers' failure to respond to his request within the required timescale.

---

1

<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-11204&ResultsPerPage=10>



### **Section 10(1) of FOISA – time for compliance**

10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
11. Since the Ministers did not provide a response to Mr Lamont's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
12. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for review, again subject to certain exceptions which are not relevant in this case.
13. The Commissioner notes that the Ministers responded to Mr Lamont's requirement for review six days after they received it. In their response, which addressed all three parts of the request, they accepted that they had been late in responding to his initial request and apologised for this.
14. Given that the Ministers responded to Mr Lamont's requirement for review, within the required timescale, the Commissioner does not require them to take any further action in relation to their failure to respond to the initial request.
15. The Commissioner will now go on to consider the remaining issues raised by Mr Lamont.

### **The Ministers' general handling of the request**

16. Mr Lamont asked the Commissioner to look at the following points in relation to the handling of his request:
  - what searches were undertaken in connection with the request, and when
  - when work began on the response and who worked on it
  - what aspects of the response took so long to deal with
  - why he was not informed that substantial portions of his eventual response were made public in the reply to a Parliamentary Question on 27 November 2012
  - why it took only 13 days to provide the response to the Parliamentary Question when it took from 5 October 2012 until 5 December 2012 to provide this information to him.

### *Submissions from the Ministers on their handling of the request*

17. In their submissions to the Commissioner, the Ministers stated that, on receipt of the request, they searched the information held in the First Minister's Office and on their electronic records management (eRDM) system using relevant key words. In this case, the key words included terms such as "Ryder cup" and "travel costs".



18. The Ministers also asserted that it became apparent that not all of the information sought by Mr Lamont was available at the time his request was received. The trip was only undertaken between 25 September and 1 October 2012. Mr Lamont submitted his request on 5 October 2012, at which time no claims or invoices had yet been presented.
19. The Ministers submitted that they had established this fact by checking with relevant members of staff involved in the trip and with the Transport and Subsistence staff. Staff searched the manual system and also the separate system for claims made using the travel and subsistence cards. The Ministers submitted that it was not unusual for claims not to be submitted until weeks or months after a trip, as staff would invariably return from trips or visits to a backlog of work. The Ministers expressed their regret that the non-availability of this information was not communicated to Mr Lamont more promptly, along with an explanation of why this was the case.
20. The Ministers acknowledged that a response to the Parliamentary Question was provided eight days before a response was issued to Mr Lamont. However, they did not agree that the answer to the Parliamentary Question contained a significant proportion of the information Mr Lamont requested. The Parliamentary Question asked for information with regard to the outcomes of the visit, they argued, whereas Mr Lamont's request sought responses to detailed questions about the costs incurred by the First Minister and those who accompanied him on the trip.
21. The Ministers submitted that Mr Lamont was not informed that the Parliamentary Question response was to be published because they did not believe it provided the specific answers or information he was seeking. They noted that no link appeared to have been established between the request and the Parliamentary Question (which had been handled by separate offices), but also that Mr Lamont (as a Parliamentary researcher) should have been aware of the Question and when it was due to be published.
22. In any event, the Ministers' response to Mr Lamont's requirement for review acknowledged that it would have been preferable to issue a response to Mr Lamont's request at the same time as the response to the related Parliamentary Question. It also copied the Parliamentary Question response in full.

*The Commissioner's findings on the handling of the request*

23. Having taken into account the fact that the request was made only four days after the conclusion of the trip in question, the Commissioner is satisfied that the Ministers took adequate steps in the circumstances to establish what relevant information they held. She accepts that they did not, at the time of receiving Mr Lamont's initial request, hold all the information requested by him. Specifically she accepts that the Ministers would have held information in respect of parts a. and b. of the request, but not complete information in respect of part c.
24. The Commissioner therefore finds that the Ministers complied with Part 1 of FOISA in providing Mr Lamont with the information they held which fell within the scope of his request.



25. Having read the content of the Parliamentary Question and the response provided to it, the Commissioner accepts the Ministers' view that the specific information sought by Mr Lamont was not actually covered by the Parliamentary Question response. The information contained in the Parliamentary Question response was of a broader nature and did not provide the level of detail required by Mr Lamont.
26. The Commissioner would comment that the Ministers were not legally bound under FOISA to provide a response to Mr Lamont's requirement for review at the same time as they issued a response to the Parliamentary Question. The Ministers had longer to deal with the review, although clearly (see paragraphs 10-15 above) they were considering a request which should have been dealt with some time *before* the Parliamentary Question was answered. In all the circumstances of this case, the Commissioner agrees with the Ministers that it would have been helpful to issue both responses at the same time.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Lamont.

She finds that the Ministers failed to respond to Mr Lamont's request for information within the timescale laid down by section 10(1) of FOISA.

However, the Commissioner also finds that the Ministers responded to Mr Lamont's request fully in dealing with his requirement for review. Given that the information requested by Mr Lamont and held by the Ministers was provided to him at that stage, the Commissioner does not require the Ministers to take any action in respect of this failure.

## Appeal

---

Should either Mr Lamont 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.

**Margaret Keyse**  
**Head of Enforcement**  
**26 March 2013**



## 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;

...

##### 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.

...