

# Decision Notice



Decision 056/2009 Mr Tom Mills and University of St Andrews

Membership of the European Commission Expert Group on Violent Radicalisation

Reference No: 200801486  
Decision Date: 27 May 2009

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr Tom Mills (Mr Mills) wrote to the University of St Andrews (the University) to ask if named academics are members of a certain European Commission Expert Group, and to ask it to provide information on terms of office, etc. and to provide copies of correspondence between those named in the request academics and the Expert Group. Mr Mills also asked the University whether any other members of its staff, etc. were members of the Expert Group or members of a related advisory body.

The University informed Mr Mills that it did not hold the information in terms of section 3(2)(a)(i) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Mr Mills was not satisfied with the University's response and asked it to review its decision. The University upheld its original decision on review.

Mr Mills remained dissatisfied with the University's response and applied to the Commissioner for a decision. Following an investigation, the Commissioner found that any information held by the University was held on behalf of another party. As a result, he was satisfied that the University had dealt with Mr Mills' request for information in line with Part 1 of FOISA.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 17(1) (Notice that information is not held) and 42(10) (The Scottish Information Commissioner)

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 19 June 2008, Mr Mills wrote to the University requesting the following information:
  - whether four named academics were members of a certain European Commission Expert Group (the “Expert Group”);
  - their term of office, any remuneration received, conditions attached and copies of their letters of appointment;
  - copies of all correspondence between the named academics and the EU/EC in relation to the Expert Group and their membership, role and activities including emails, letters, contracts, any advice, briefings or reports (encompassing all forms of information held including voicemail, audio and video files etc.);
  - which other members of staff, advisors or honorary staff at the University are members of the Expert Group or of another related body.
2. The University responded on 26 June 2008, advising Mr Mills that three of the academics named in his request were not current members of staff. As a result, it did not have information on any memberships these individuals may currently hold of any group or organisation and so the information was therefore not held by the University in terms of section 17(1) of FOISA.
3. However, the University confirmed that one of the academics (referred to in this decision as “Academic A”) was a current member of staff and had volunteered the information that he was a member of the Expert Group. The University also noted that Academic A had voluntarily consented to the disclosure by the University, on his behalf as a private individual, that his position with the Expert Group is unremunerated.
4. The University noted that Academic A’s involvement was entirely in a private consultancy capacity, separate from his duties undertaken at or on behalf of the University, and that no contracts or letters of appointment or, indeed, any other correspondence have been dealt with by or for the University in connection with this membership. The University was therefore satisfied that, should any such information be physically held by it (e.g. on the University premises or stored on the University email system), the information would be held *on behalf of* Academic A as a private individual and would not be legally held by it in terms of section 3(2)(a)(i) of FOISA.
5. The University referred Mr Mills to its April 2003 External Work Policy, which explicitly permits private consultancy. This policy specifically states that staff are personally liable with regard to any claims arising from the work undertaken and that staff undertake private consultancy as individuals and not as agents of the University.



6. The University also stated that to identify staff or other individuals connected with the University as members of an Expert Group would likewise be a comment on their activities as private individuals and that, again, in terms of 3(2)(a)(i) of FOISA, the information was not held by the University.
7. On 4 July 2008, Mr Mills wrote to the University asking it to review its decision.
8. The University subsequently carried out a review and notified Mr Mills of the outcome of the review on 11 July 2008. The University upheld the original decision.
9. On 14 October 2008, Mr Mills wrote to the Commissioner, stating that he was dissatisfied with the outcome of the University's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Mills commented that to maintain that all consultancy work is necessarily not subject to FOISA would mean that a significant amount of work undertaken by public authorities is not subject to public scrutiny. He also stated that there is "clear evidence" that the consultancy work has been awarded to the individuals because of their position at the University.
10. The application was validated by establishing that Mr Mills 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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11. The investigating officer wrote to the University on 19 November 2008, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. For example, the University was asked to provide additional information as to why it considered that it did not hold information under section 3(2)(a)(i) of FOISA, and was also asked to confirm whether it actually had access to certain information sought by Mr Mills, even if it considered that it did not legally *hold* the information under FOISA.
12. Given Mr Mills' comments about consultancy work being awarded to individuals because of their position at the University, the investigating officer also asked whether the University had been consulted by the Expert Group prior to the appointment of potential members or whether the University otherwise had any input into the selection of members.



13. The University responded on 8 December 2008 and advised the investigating officer that only three of four academics named by Mr Mills had ever been employed by the University (one of these, Academic A, continues to work for the University). The information relating to the two academics no longer employed by the University had been removed from the University premises and systems prior to the date of Mr Mills' information request and the University no longer had access to it. The University does not have any access to information about the academic who had not been employed by the University. The University stated that information about these three individuals was, as a result, not held by it.
14. The University also stated that, in relation to Academic A, it had no access to any material held in a personal capacity as any information which it might hold would be held on his behalf as a private individual in a private consultancy capacity and would therefore not be held in terms of section 3(2)(a)(i) of FOISA. In support of this, the University also provided a copy of its April 2003 policy (referred to in paragraph 5 above), entitled "External Work: Policy Document for Academic and Academic Related Staff) (the Policy), which outlines the procedures under which private consultancy work may be carried out by academic (and academic related) staff.
15. On page 9 of the Policy, it states, under the heading "Private Consultancy":

*"... staff make their own arrangements with the customer and are personally liable with regard to any claims arising from the work undertaken in respect of any materials, information, advice etc. Staff undertake Private Consultancy as individuals and not as agents of the University.*

*Staff are also required to inform their client that they are acting in a private capacity, and that the Court will not in any circumstances accept responsibility for their work. The University will also notify the body or person in similar terms."*
16. The University confirmed that it had no prior consultation with the Expert Group prior to the appointment of potential members, nor had it had any input into the selection process.
17. On reading the Policy, the investigating officer noted that, not only does it state that the University will contact ("notify") the client for whom private consultancy work is being carried out, but also that, according to page 8, staff considering undertaking any form of consultancy must complete and submit a "Consultancy Form" and receive due authorisation before accepting any consultancy work, whether paid or unpaid.
18. Given that this information was likely to be held by the University on its own behalf rather than on behalf of another person under section 3(2)(a)(i) of FOISA, the investigating officer wrote to the University on 16 December 2008, asking the University:
  - whether the Consultancy Procedures are generally followed in practice;
  - to provide copies of any Consultancy Forms or payment declaration forms held in relation to Mr Mills' information request;



- to confirm whether the University held any other information relating to the declaration of the private consultancy work which may have been required by the Research And Enterprise Services Department of the University;
  - to detail any searches it had carried out to establish whether any information was held regarding the declaration of the consultancy work and, if no searches had been carried out, asking the University to carry them out now and to provide the Commissioner with copies of any relevant documents found.
19. The University responded on 23 December 2008, stating that its Consultancy Procedures were generally followed in practice, but that it had found no information or documentation in relation to the declaration of the work carried out for the Expert Group referred to in Mr Mills' information request. The University commented that it had searched only two information sources: its Contracts Management Information Service database and its Personal Consultancy authorisation forms, which it held as far back as 2002. The University noted that forms were held for one of the academics named by Mr Mills, but not in relation to the Expert Group Mr Mills was interested in.
20. On 7 January 2009, Mr Mills wrote to the Commissioner, with a number of comments about the case, and referring him to a University submission document (for the Research Assessment Exercise 2008 (the RAE 2008)), the contents of which he considered may be relevant to the ongoing investigation. Mr Mills commented that if the appointments to the Expert Group are mentioned in the submission, especially under "Esteem Indicators", then it will be "clear" that there is more to the relationship than simply a "private arrangement."
21. In the light of the University's response of 23 December 2008, and Mr Mills' letter of 7 January 2009, the investigating officer wrote again to the University on 12 January 2009 and asked the University:
- to comment on the reasoning for no such information or documentation being found (e.g. did the lack of documentation mean that the work was not actually carried out in a private capacity, or whether the work was carried out in a private capacity but either the Policy was not followed or the Policy was followed, but the records are no longer held);
  - whether it had asked Academic A as to whether he could recall ever having completed any such documentation and, if not, to do so now;
  - to carry out a more thorough search of its records in connection with the private consultancy declarations of any of the named academics in relation to their roles as members of the Expert Group;
  - to provide comments on Mr Mills' letter of 7 January 2009 and to send the Commissioner a copy of its submission to the RAE 2008.



22. On 20 January 2009, the University provided a copy of the submission made by the School of International Relations to RAE 2008 and stated that:
- it had found a private consultancy form for one of the academics but this was not in relation to work carried out on behalf of the particular Expert Group. The University noted that it appeared to be the case that Academic A had not declared the private consultancy work carried out for the Expert Group;
  - it had since spoken to Academic A who had volunteered the information that he could not, to the best of his recollection, remember filling in any private consultancy documentation;
  - it had carried out further searches, as requested, to ascertain whether any relevant information was held.

## Commissioner's analysis and findings

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23. In coming to a decision on this matter, the Commissioner has considered all of the information and submissions made available to him by both Mr Mills and the University and is satisfied that no matter of relevance has been overlooked.

### Section 17(1)

24. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
25. In order to determine whether the University was correct to advise Mr Mills that it did not hold the requested information, the Commissioner must establish whether the University holds (or held at the time of Mr Mills' request) information which would address his request. The information request was made to the University in relation to work carried out by academics for a body other than the University itself, and so the Commissioner must also consider whether any information in the University's possession is held by it on behalf of another person (in this case, the academics) in terms of section 3(2)(a)(i) of FOISA and, accordingly, not held by the University for the purposes of FOISA.
26. The Commissioner initially considered whether the University may hold relevant information in its records system in connection with its own processing of any private consultancy documentation regarding work carried out for the Expert Group by the specific academics.
27. The University carried out the following searches:
- a search of its Contracts Management Information Service database



- a search of its Personal Consultancy authorisation forms which it held as far back as 2002.
  - three individuals who were Head of the School of International Relations during the relevant time period and the Director of Research in the School were asked to search their records.
  - the relevant School secretary was asked to check her own files; she stated that the computers of the academics concerned had now been either disposed of as obsolete or had the hard disk reformatted.
  - it checked with its I.T. services who said that email back-up tapes are re-cycled every six months. As a result, no information was held on the back-up tapes. In addition, the University's I.T. services advised that the computer accounts of the two academics in question who had left the employment of the University had since been de-activated.
28. The University confirmed that no relevant information was found as a result of carrying out these additional searches.
29. Academic A stated that because his work for the Expert Group was unremunerated, he had not seen the need to complete any private consultancy documentation for the University and could not recall having filled in any such documentation.
30. The Commissioner accepts that the above searches were thorough and would be sufficient to locate any information held in its records system in connection with its own processing of any private consultancy declarations made by the relevant academics regarding work the Expert Group. He is therefore satisfied, on balance, that the University does not hold any such information.

### Section 3(2)(a)(i)

31. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority which *holds* it is entitled to be given it by the authority. However, section 3(2)(a)(i) of FOISA makes it clear that if the authority holds the information on behalf of another person, then the information is not considered to be held by the authority for the purposes of FOISA.
32. The University stated that even if it had in its possession the information requested by Mr Mills, it did not hold the requested information for the purposes of FOISA.
33. In considering whether section 3(2)(a)(i) of FOISA applies to any information that may be held by the University in relation to communications between the academics in question and the Expert Group, the Commissioner notes Mr Mills' assertion that the members of the Expert Group are appointed based on their expertise as employees of the University and, as such, their work for the Expert Group should be considered to be work undertaken under the auspices of the University rather than Private Consultancy work.





34. In coming to a conclusion on this point, the Commissioner has taken into account the fact that Academic A has stated that he was asked to join the Expert Group on account of his breadth of experience in his field and also partly on account of his being a citizen of a specific EU country.
35. He has also taken into account the content of the University's 2003 External Work Policy document and the distinction this document makes between work carried out for the University and work carried out in a Private Consultancy capacity.
36. As noted above, Mr Mills referred the Commissioner to the University's RAE 2008 report submission as he considered that this provided additional evidence that the academics in question carry (or carried) out work for the Expert Group in their capacity as members of staff of the University. However, having considered the submission, the Commissioner is satisfied that there is nothing in this submission which gives weight to Mr Mills' claim that the relevant academics have been carrying out work for the Expert Group in their capacity as members of staff of the University.
37. Having considered the evidence before him, the Commissioner is satisfied that no information is held by the University under section 17(1) of FOISA. Furthermore, the Commissioner is satisfied that even if it did hold information, the information would not be held in terms of section 3(2)(a)(i) of FOISA.

#### **Other matters**

38. The Commissioner is currently the Rector of St Andrews University. He has therefore authorised Graham Smith, Deputy Commissioner, appointed under paragraph 4(1)(a) of the Data Protection Act 1998 (as amended), to decide whether Mr Mills' request for information has been dealt with by the University in accordance with Part 1 of FOISA, in line with section 42(10) of FOISA.

#### **DECISION**

The University of St Andrews dealt with Mr Mills' information request in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002.



## Appeal

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Should either Mr Mills or the University of St Andrews 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.

**Graham Smith**  
**Deputy Information Commissioner**  
**27 May 2009**



## 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.

...

##### 3 Scottish public authorities

...

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-

(a) by the authority otherwise than-

(i) on behalf of another person; 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.



**42 The Scottish Information Commissioner**

...

- (10) Any function of the Commissioner may be exercised on behalf of that officer by any person (whether or not a member of that officer's staff) authorised by the Commissioner to do so (and to the extent so authorised).