

# Decision Notice



Decision 095/2012 Paul Hutcheon of the Sunday Herald and the Scottish Ministers

Names and costs of consultants

Reference No: 201200531  
Decision Date: 11 June 2012

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Mr Hutcheon asked the Scottish Ministers (the Ministers) for information relating to consultancy work. The Ministers did not respond to this request. Following a review, at which point the Ministers gave Mr Hutcheon notice in terms of section 17(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) that they did not hold the information he had requested, Mr Hutcheon remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the Ministers did not hold any information falling within the scope of Mr Hutcheon's request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17 (Notice that information is not held)

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 16 November 2011, Mr Hutcheon emailed the Ministers requesting the names of all consultants / consultancy firms hired to work on a) the Government's plan for a constitutional referendum and b) independence for Scotland. In addition, he asked the Ministers in each case to state how much was paid out and the purpose of each payment.
2. The Ministers did not respond to this request and, on 16 January 2012, Mr Hutcheon emailed the Ministers requesting a review of their failure to respond.
3. The Ministers notified Mr Hutcheon of the outcome of their review on 13 February 2012 advising him that they did not hold the requested information.
4. On 19 March 2011, Mr Hutcheon wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review (as he believed that the Ministers did hold the information) 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 Hutcheon 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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6. 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 clarify the steps they had taken in order to identify and locate the information Mr Hutcheon had requested.
7. The Ministers responded on 16 May 2012, providing submissions in support of their position that the requested information was not held by them
8. The investigating officer also contacted Mr Hutcheon during the investigation seeking his submissions on the matters to be considered in the case. Mr Hutcheon's submissions, along with those of the Ministers are summarised and considered (where relevant) in the Commissioner's analysis and findings section below.

## Commissioner's analysis and findings

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

### Section 17 of FOISA – Notice that information is not held

10. 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.
11. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
12. In this case, the Ministers responded to Mr Hutcheon's requirement for review by stating that the information that he had requested was not held by them.
13. In their submissions to the Commissioner, the Ministers provided details of the searches they had undertaken in order to identify relevant information. The Ministers explained the searches that had been undertaken, including the search terms used to conduct electronic searches.



14. The Ministers explained that they had undertaken a search of the Scottish Government's electronic Records Management System using combinations of key search terms that would be likely to identify any relevant recorded information. The Ministers noted that these searches did not identify any relevant information.
15. The Ministers also sought guidance from the Scottish Government's Procurement Directorate on what services the Scottish Government classed as "consultancy". The guidance was that the appropriate definition was that contained in Annex A of the Scottish Government's Consultancy Procedures<sup>1</sup>.
16. The Ministers also consulted the lead officials on the only programmes of work that they considered would have been likely to generate information of the type sought by Mr Hutcheon. As a consequence and, as a result of their further enquiries, the Ministers stated that they had established that no external consultancy work had been carried out or commissioned that fell within the terms of Mr Hutcheon's request.
17. In his submissions, Mr Hutcheon indicated that he had information to the effect that the Government had spent more money on the independence referendum than had been publicly disclosed. He indicated that this included the amount spent on consultants.
18. The Commissioner has considered the submissions made by both Mr Hutcheon and the Ministers. Having considered the steps and searches undertaken by the Ministers and their explanation of why they do not hold the specific information sought by Mr Hutcheon, the Commissioner is satisfied that they do not hold any recorded information (and did not at the time of the request) that would fulfil the terms of Mr Hutcheon's request.
19. The Commissioner accepts that it was reasonable in all the circumstances for the Ministers to conclude that they did not hold information which fell within the scope of Mr Hutcheon's request. She is therefore satisfied that the Ministers were correct to give Mr Hutcheon notice, in terms of section 17(1) of FOISA, that they held no information falling within the scope of his request.

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<sup>1</sup> <http://www.scotland.gov.uk/Resource/Doc/116601/0121455.pdf>



## **DECISION**

The Commissioner finds that, in respect of the matters specified in the application, the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Hutcheon.

## **Appeal**

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Should either Mr Hutcheon 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**  
**11 June 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.
- ...
- (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.

...

##### 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.

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