



Scottish Information
Commissioner

**Decision 131/2006 Mr Stewart Mackenzie and the
Scottish Executive**

*Information relating to Ministers' meetings with individual members
of the public*

**Applicant: Mr Stewart Mackenzie
Authority: The Scottish Executive
Case No: 200600091
Decision Date: 28 June 2006**

**Kevin Dunion
Scottish Information Commissioner**

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Information relating to Ministers' meetings with individual members of the public – information not held – section 17 of the Freedom of Information (Scotland) Act 2002

Facts

Mr Mackenzie made seven separate requests for information relating to meetings between named Ministers and individual members of the public. In response, the Scottish Executive (the Executive) advised him that information relating to the status of people involved in specific meetings was not routinely recorded and so the information requested was not held. This decision was upheld following an internal review of this matter by the Executive. Mr Mackenzie then asked the Commissioner to consider this case, noting that he believed that Ministers' diaries would contain the information he had requested.

Outcome

The Commissioner found that the Executive had acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its response to Mr Mackenzie's request for information.

Having reviewed the types of information recorded by the Executive in relation to Ministerial meetings and engagements, the Commissioner concluded that the Executive had correctly informed Mr Mackenzie that the information he had requested was not held.

Appeal

Should either Mr Mackenzie or the Scottish Executive 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 of receipt of this notice.



Background

1. Mr Mackenzie sent seven requests for information and a covering letter to the Executive by fax on 9 November 2005. The individual requests were addressed to seven Ministers and, in identical terms, sought information for the period 30 October 2003 to 31 January 2005 confirming:
 - a) The number of “formal private meetings” the Minister had held with members of the public or individuals who were not part of any organisation;
 - b) The number of requests received from members of the public/individuals to have a private meeting with the Minister; and
 - c) Of the number in response to (b), how many meetings were held.
2. Mr Mackenzie confirmed in each request that he did not want to be provided with the names of individuals who had met or requested meetings with the Minister. However he sought confirmation of the part of the Minister’s remit to which the meetings related.
3. These seven requests were made after Mr Mackenzie had previously (in October 2005) submitted two requests for information, which together sought details of all Ministers’ meetings with members of the public since January 2001. Following receipt of these, an official spoke with and then wrote to Mr Mackenzie asking him to clarify the terms of his request. The official’s letter explained her understanding of the information request in the light of her conversation with Mr Mackenzie. This letter noted that the wide scope of the requests meant that the cost of compliance was likely to exceed the £600 limit set out in FOISA, beyond which a public authority is not required to respond to a request for information. This letter also indicated that, even if Mr Mackenzie made further narrower requests, the information Mr Mackenzie was seeking was not actually held.
4. Following his receipt of this letter, Mr Mackenzie did not seek to clarify further his initial requests, but made the seven new requests described in paragraphs 1 and 2 above. His covering letter indicated that he believed this meant the costs of compliance with each should not exceed the £600 limit. He also noted that it would be inconceivable that Ministers did not operate a diary system, and went on to note that any private meetings would obviously be scheduled and diared for the Minister concerned. He concluded that the information requested therefore must be held.



5. The Executive responded to these new requests on 23 November 2005, advising Mr Mackenzie that the Executive does not routinely hold information relating to the status of people involved in official meetings, and therefore, that the information requested was not held.
6. Mr Mackenzie requested a review of this matter in a fax dated 27 November 2005, which reiterated his view that it would be inconceivable that Ministers' appointments would not be recorded within their diaries. Again, he suggested that the information requested must be routinely recorded. He also noted that any letters requesting meetings with Ministers would be held by the Executive.
7. The Executive's response, dated 29 December 2005, upheld the original decision in relation to Mr Mackenzie's request. This explained that when scheduling meetings, Ministers' Private Offices would not necessarily record the status of those attending meetings with the Ministers, and so it could not be determined from the contents of the diary whether a person attended in a private capacity or as a representative of an organisation. The Executive explained further that no central record was maintained of the requests for meetings with Ministers, separate from other correspondence.
8. Mr Mackenzie made an application for a decision by me on this matter in a fax that was received by my Office on 9 January 2006. His application expressed dissatisfaction with the Executive's handling of his requests, given his understanding that the information requested would be available within Ministerial diaries.

Investigation

9. Mr Mackenzie's application was allocated to an investigating officer and then validated by establishing that Mr Mackenzie had made valid information requests to a Scottish public authority (i.e. the Executive) under FOISA and had appealed to me only after asking the Executive to review its response to the requests.
10. The investigating officer wrote to the Executive on 19 January 2005 informing it that an appeal had been received and that an investigation into the matter had begun. The Executive was invited to comment on the case in terms of section 49(3)(a) of FOISA. The Executive was also asked to supply samples from Ministers' diaries and other records related to meetings, and to provide background on:



- a) the processes followed in administering ministerial appointments and in responding to requests for meetings, and
 - b) the types of records created and retained by the Executive relation to Ministerial appointments.
11. The Executive's response to this request was received on 20 February 2006.
12. On 7 June 2006, the investigating officer visited the Executive to view records from the diaries of each of the Ministers to whom Mr Mackenzie's requests were addressed. She also met with officials to gain further understanding of the operations of Ministers' Private Offices, the handling of Ministerial correspondence, and the types of records created in the course of administering Ministerial appointments and requests for these.

The Commissioner's analysis and findings

13. In this case, Mr Mackenzie asserts that because Ministers (or their staff) record their meetings within diaries, it must also be the case that information is held that would reveal how many of these meetings were held with individual members of the public who were not part of any organisation.
14. For the avoidance of doubt, the questions raised in this case are not those of
- a) whether Ministers hold meetings with individual members of the public, or
 - b) whether such meetings will be recorded in Ministers' diaries.
- I take it to be accepted on all sides that such meetings do take place and where they do, the appointments will be recorded within the diary of the Minister concerned.
15. The question for me to consider is whether or not the Executive creates and retains recorded information, either within these diaries or in other types of records, that will
- a) identify meetings between Ministers and individual members of the public, (or identify a request for a meeting as one received from an individual member of the public),
- and
- b) distinguish these meetings or requests from meetings with or requests from other people (e.g. colleagues, officials, or representatives of other organisations).



16. In the course of my investigation, the Executive has provided me with detailed background information explaining how Ministerial Private Offices operate and administer the diaries of their respective Ministers. The Executive has also explained the processes involved in administering and responding to correspondence addressed to Ministers.
17. I have viewed samples from each relevant Ministers' diary to confirm the types of information that are recorded in relation to their appointments. I have also considered whether the information requested by Mr Mackenzie might be held in records created outwith the Ministers' diaries, for example in the operation of the Ministerial correspondence system, or in other records created or held by Ministerial Private Offices.
18. Following this detailed examination of the types of records held by the Executive, I have confirmed that the information requested by Mr Mackenzie is not held by the Executive. Perhaps the simplest way for me to explain my findings is through a hypothetical example.
19. A Minister's diary might record that he or she has a meeting with "David Smith". In some cases the diary will record that Mr Smith represents a particular organisation, in other cases it will not. Where no organisation name is recorded, Mr Smith may prove to be, for example
 - an Executive official,
 - a businessman,
 - a journalist, or
 - a member of the public.
20. However, the Minister's diary will not necessarily record any information that would confirm which of these categories Mr Smith belongs to. The recorded information in the diary does not systematically distinguish between these different categories of appointment.
21. I have found that (for all of the Ministers concerned) the contents of Ministers' diaries provided only limited information about the status of individuals attending meetings. Given the limitations of the information recorded, it would not be possible to conduct a search of diary entries to identify just those meetings with individual members of the public. As a result, the recorded information would not reveal the number of meetings that were held with individual members of the public, not being representatives of organisations.



22. In order to respond to Mr Mackenzie's request, the Executive would need not only to review the Ministers' diaries for the period covered by his request, but also to supplement the information contained in these. This would mean creating new recorded information, by confirming (if this were possible) the status of meeting attendees as either members of the public or representatives of an organisation.
23. FOISA does not require public authorities to create new information in response to requests. Only the information that is held in a recorded form by the Executive requires to be considered for the purposes of responding to Mr Mackenzie's requests.
24. Having also considered thoroughly the systems for handling Ministerial correspondence and the records created in the course of these, I have also concluded that the Executive does not hold information that would reveal the number of requests for meetings received by each of the Ministers from members of the public, or the number of these that were accepted. For this information to be held, the Executive would be required to systematically hold recorded information confirming:
 - a) The status of a person writing to the Minister to request meetings
 - b) Whether such a request was accepted or declined.
25. The supplementary information in a) and b) is not systematically recorded or held by the Executive. This means that even if all correspondence addressed to relevant Ministers was reviewed in order to identify those which contained requests for meetings, the information requested by Mr Mackenzie is not held and so could not be retrieved.

Decision

I find that the Scottish Executive acted in accordance with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) its handling of Mr Mackenzie's request for information. In particular, the Executive acted in accordance with section 17 of FOISA by advising Mr Mackenzie that the information he had requested was not held.

Kevin Dunion
Scottish Information Commissioner
28 June 2006