

# Decision Notice



Decision 140/2008 Mr Rob Edwards and the Scottish Ministers

*Documents contained in file IMI 2/11: Security and the Terrorist Threat*

Reference No: 200601012

Decision Date: 5 November 2008

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## Summary

This decision relates to a request from Mr Edwards for the contents of a file held by the Scottish Ministers, i.e. file IMI 2/11: Security and the Terrorist Threat. The Ministers released 13 documents from the file to Mr Edwards, five of which had been redacted.

The Ministers also advised Mr Edwards that they did not “hold” some of the documents in the file, as they had been provided to them by the United Kingdom Government and they held this information in confidence in terms of section 3(2)(a)(ii) of the Freedom of Information (Scotland) Act 2002 (FOISA). This meant that they fell outwith the scope of FOISA. The Ministers also relied on a number of exemptions in FOISA for withholding certain information contained in the file from Mr Edwards. Mr Edwards was dissatisfied with this response and, following an internal review, applied to the Commissioner for a decision.

During the investigation, the Commissioner came to the view that some of the information which had been withheld from Mr Edwards was environmental information as defined by the Environmental Information (Scotland) Regulations 2002 (the EIRs). He therefore considered whether the Ministers should have made that information available to Mr Edwards under the EIRs.

The Commissioner found that the Ministers had been entitled, under both FOISA and the EIRs, to withhold some of the information contained in the file from Mr Edwards. He also found that some of the information requested by Mr Edwards was not held by the Ministers in terms of either section 3(2)(a)(ii) of FOISA and/or regulation 2(2)(a) of the EIRs.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002: sections 1(1) and (6) (General entitlement); 2 (Effect of exemptions); 3(2)(a)(ii) (Scottish public authorities); 15(1) (Duty to provide advice and assistance); 28 (Relations within the United Kingdom); 29(1)(a) and (b), (2), (3) and (4) (Formulation of Scottish Administration Policy etc); 30(b) and 30(c) (Prejudice to the effective conduct of public affairs) and 31(1) (National security and defence)

Environmental Information (Scotland) Regulations 2004: regulations 2(1) (definition of environmental information) and (2)(a) (Interpretation); 5(1) and (2)(b) (Duty to make available environmental information on request); 9(1) (Duty to provide advice and assistance) and 10(1), (2), (4)(e) (Exceptions from duty to make environmental information available)

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 6 December 2005, Mr Edwards submitted eight information requests to the Ministers, citing both FOISA and the EIRs. In this information request, Mr Edwards asked for copies of all of the documents contained in eight separate, named files. One of these files was file IMI 2/11: Security and the Terrorist Threat.
2. The Ministers provided a substantive response to Mr Edwards on 19 April 2006. No reference was made to the EIRs in this response and it is clear from the response that the Ministers had chosen to deal with the request solely under FOISA.
3. The Ministers released 13 documents from the file, five of which had details of Whitehall civil servants redacted. The Ministers indicated that they did not hold some of the information contained in the file for the purposes of FOISA; in terms of section 3(2)(a)(ii) of FOISA, information is not held by a public authority if it is held in confidence, having been supplied by a Minister of the Crown or a Department of the Government of the United Kingdom. The Ministers also indicated in their response that they were withholding some information from Mr Edwards and were relying on a mixture of exemptions in sections 28, 29, 30 and 31 of FOISA for doing so. The Ministers also advised Mr Edwards that the majority of the information in the file comprised press cuttings and that these are readily accessible elsewhere. The Ministers provided Mr Edwards with a list of these press cuttings.
4. Mr Edwards contacted the Ministers on 21 April 2006, asking them to review their decision to withhold information under sections 28, 29, 30 and 31 of FOISA. He commented that without having seen the information, it was difficult to judge whether the public interest had been misjudged and he asked for a formal review of the information which had been withheld to check whether, in fact, it might be in the public interest to release it.
5. The Ministers responded to Mr Edwards' request for review on 11 May 2006, upholding their original decision. The Ministers indicated that they had considered the public interest test and agreed with the original conclusions which had been reached. The Ministers did not indicate whether they had considered Mr Edwards' information request under the EIRS, but again it would appear that the request for review had been dealt with solely under FOISA.
6. On 6 June 2006, Mr Edwards applied to the Commissioner for a decision as to whether the Ministers had been correct to withhold information from him under the exemptions in sections 28, 29, 30 and 31 of FOISA. The case was subsequently allocated to an investigating officer. (The press cuttings were not referred to in Mr Edwards' application to the Commissioner or, indeed, in his request for review. As a result, they do not form part of this investigation.)
7. Mr Edwards' application was validated by establishing that he had made a valid information request to a Scottish public authority (i.e. the Scottish Ministers) and had applied to the Commissioner for a decision only after asking the Ministers to review their response to his request.



## Investigation

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8. A letter was sent by the investigating officer to the Ministers on 13 June 2006, notifying them of Mr Edwards' application and inviting their comments on the application.
9. The Ministers replied on 18 July 2006 and provided the Commissioner with file IMI 2/11.

### Submissions from the Ministers

10. The Commissioner will consider the Ministers' reasons for finding that the some of the information was not held by them in terms of section 3(2)(a)(ii) and for relying on the exemptions in sections 28, 29, 30 and 31 in the Analysis and Findings section below.

### Submissions from Mr Edwards

11. During the course of the investigation, the investigating officer sought comments from Mr Edwards on what, in his view, was the public interest in release of the documents in this file.
12. As with the submissions from the Ministers, the submissions from Mr Edwards will be taken into account below.

## Commissioner's analysis and findings

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### FOISA or EIRs?

13. In *Decision 218/2007 Professor A D Hawkins and Transport Scotland*, the Commissioner considered the relationship between FOISA and the EIRs at some length. Broadly, the Commissioner's position on the interaction between the two regimes is as follows:
  - The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition in the EIRs.
  - There are two separate statutory frameworks for access to environmental information and a Scottish public authority is required to consider any request for environmental information under both FOISA and EIRs.
  - Any request for environmental information therefore must be dealt with under the EIRs.
  - In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
  - If the authority does not choose to claim the section 39(2) exemption, it must, as well as dealing with the request under the EIRs, deal with the request fully under FOISA, by providing the information, withholding it under another exemption in Part 2, or



claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 of FOISA (or a combination of these).

- The Commissioner is entitled (and indeed obliged) where he considers a request for environmental information has not been dealt with under the EIRs to consider how it should have been dealt with under that regime.

14. Firstly, therefore, the Commissioner must determine whether all or part of the information withheld from Mr Edwards is environmental information. If the Commissioner finds that all or part of the information is environmental information, he must go on to consider the Ministers' handling of that environmental information in terms of the EIRs.
15. "Environmental information" is defined in regulation 2 of the EIRs (the definition is reproduced in full in the Appendix). Where information falls within the scope of this definition, a Scottish public authority holding that information has a duty to make it available, subject to various restrictions and exceptions contained in the EIRs, to the applicant.
16. In this case, Mr Edwards made his information request under both FOISA and the EIRs. During the investigation, the investigating officer asked the Ministers to confirm whether they had ever considered the request in terms of the EIRs and, if so, what conclusion the Ministers had reached. The Ministers confirmed that they had considered dealing with Mr Edwards' request under the EIRs. However, they took the view that the request was not for environmental information and so they dealt with the request under FOISA.
17. The Commissioner has considered carefully the information withheld from Mr Edwards and considers that some of the information does in fact fall within the definition of environmental information set out in the EIRs.
18. The Commissioner considers that the following documents do not contain any environmental information: documents 4-11 of Part 001 of the file and document 3 of Part 002 of the file. However, the remaining documents in the file do contain environmental information, albeit to a varying degree.
19. Section 45 of FOISA makes it a criminal offence for the Commissioner to disclose information which he has obtained, or which has been furnished to him, for the purposes of FOISA, if, at the time of the disclosure, the information is not, and has not previously been, available to the public from another source. (Subject to minor modifications, section 45 of FOISA also applies in relation to the Commissioner's functions under the EIRs, by virtue of regulation 17 of the EIRs.)



20. In most cases, it will be clear from an information request roughly what types of information are covered by the request. This means that it is easier for the Commissioner to explain why he does or does not consider that certain information is environmental without disclosing what the information actually says, and falling foul of section 45. However, in this case, Mr Edwards has asked for the contents of a named file. Apart from knowing the name and number of the file (and apart from knowing what information was disclosed to him previously), he does not know what is contained in the file. The information is not available to the public from another source. As a result, it is very difficult for the Commissioner to explain what information he considers to fall within the definition of environmental information and why. In this instance he can only confirm that he has considered all of the documents and come to a conclusion.
21. He considers that the following documents contain environmental information within the definition in regulation 2(1) of the EIRs (the paragraphs refer to the definitions of environmental information set out in the EIRs):
- Part 001
- Document 1: definition (c)
  - Documents 2, 2(a), 2(b), 2(c), 3, 17 – 22: definitions (b), (c) and (f)
  - Documents 12, 13, 14, 15, 16: definitions (b) and (c)
- Part 002
- Documents 1 and 2: definitions (b), (c) and (f)
22. Given that the Commissioner is satisfied that some of the information withheld from Mr Edwards is environmental information and given that the Ministers did not consider the information under the EIRS or cite the exemption in section 39(2) of FOISA in relation to this information (they were not asked to do so in this case), the Commissioner will go on to consider whether the Ministers were entitled to withhold the environmental information under both FOISA and the EIRs. The Commissioner considers that he is able to do this without seeking further submissions from the Ministers on the EIRS, given that the EIRS contain clear equivalents of the provisions relied on in FOISA and that the submissions made by the Ministers under FOISA are easily transferable to the provisions in the EIRS.

### **Application of FOISA**

23. The Commissioner will first of all consider whether the Ministers dealt with Mr Edwards' request in line with Part 1 of FOISA. In all, 25 documents were withheld from Mr Edwards.



### Section 3(2)(a)(ii) (Information supplied by the UK Government)

24. 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, in terms of section 3(2)(a)(ii) of FOISA, information is not considered to be held by a Scottish public authority if it holds that information in confidence, having been supplied by a Minister of the Crown or by a department of the Government of the United Kingdom.
25. This does not mean, however, that the information is completely out of bounds, because an information request can be made for that information to the relevant Minister of the Crown or UK Government department under the (UK) Freedom of Information Act 2000 (FOIA).
26. The Ministers have applied section 3(2)(a)(ii) to document 1 in Part 001 of the file and to documents 1 and 2 in Part 002 of the file.
27. The Commissioner's briefing on the exemption in section 28 of FOISA envisages that information supplied by UK Government Departments and intended to be held in confidence would normally be clearly marked as such. There may be cases, however, where information without an "in confidence" or other protective marking appears to an authority to be sensitive. In such cases, the Scottish public authority will wish to confer with the relevant UK Government Department to determine the status of the information.
28. Having considered the submissions from the Ministers, and having examined the documents in question, the Commissioner is satisfied that documents 1 and 2 in Part 002 of the file fall within the scope of section 3(2)(a)(ii). The documents are marked "secret" and the Commissioner is satisfied that they are held in confidence by the Ministers, having been supplied by a department of the Government of the United Kingdom. As a result, the Commissioner agrees that these two documents are not held by the Ministers for the purposes of FOISA.
29. Although document 1 of Part 001 does not contain any such security markings, the Commissioner is satisfied that it is also covered by section 3(2)(a)(ii).
30. The Commissioner notes that the Ministers did not provide any advice to Mr Edwards about how to make a request for the information held in confidence to the Department of the UK Government which supplied it, under the terms of FOIA. Where a public authority has advised an applicant that some of the information he or she has requested is not held by it for the purposes of FOISA, the Commissioner expects the authority to provide advice and assistance to the applicant in terms of section 15(1) of FOISA. The Commissioner considers that it was reasonable to expect the Ministers to provide Mr Edwards with the name of the UK Government Minister or UK Government department which provided them with the information and to provide Mr Edwards with advice and assistance to identify the information he is seeking. By failing to do so, the Commissioner considers that the Ministers failed to comply with the duty to provide advice and assistance under section 15 of FOISA.



## Section 28 (Relations within the United Kingdom)

31. The Ministers have relied on the exemption in section 28(1) of FOISA to withhold seven documents in their entirety from Mr Edwards.
32. Section 28(1) of FOISA exempts information if its disclosure would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration. The Scottish Administration and the Government of the United Kingdom fall within the definition of “administration” in section 28(2) of FOISA. The Ministers have argued that disclosure would prejudice substantially relations between the two administrations.
33. The Ministers have commented that the information contained within file IMI 2/11 comes from a variety of sources, due to the fact that the work of the Ministers’ radioactive waste team covers a wide range of issues. The Ministers have advised that some of the issues covered within the file are those the team have a policy lead on, and other issues are those that the team are seeking to influence or receive information on, as these affect their area of responsibilities.
34. The Ministers consider that all of the documents provided to them by the UK Government contained within the file which have come from the UK Government are exempt in terms of section 28(1) (as noted above, the Ministers also consider that they do not hold some of these documents in terms of section 3(2)(a)(ii) of FOISA). The Ministers have advised that disclosure of the information would affect the concordats they have in place with other UK Government departments, in that it would affect the co-operation, joint working and exchange of information that exists between the different departments and the Ministers.
35. The Ministers consider that disclosure of this information would have a detrimental effect on the effectiveness of the Scottish Government, in that the Government would no longer be briefed fully on matters of current interest and debate. (While the political landscape in Scotland may have changed since Mr Edwards made his request, it is important to remember that the Commissioner must consider the position as at May 2006, when the Ministers responded to Mr Edwards’ request for review.)
36. The Commissioner is not satisfied that disclosure of document 3 of Part 001 of the information would, or would be likely to, prejudice substantially the relationship between the Ministers and the UK Government. This document appears to be a routine – if detailed – communication between the Scottish and UK Governments in which an interest in a particular area of work is expressed. The Commissioner does not consider that disclosure of this document would have the effect envisaged by the Ministers. (The Commissioner also notes that the information in this document is identical to document 2 in Part 001 of file IMI 2/12, which is subject to a separate investigation by the Commissioner and that the Ministers did not apply the exemption in section 28(1) of FOISA to this document in that case.)





37. Document 4 in Part 001 of the file is an internal Scottish Government document. The Commissioner considers that internally produced documents can fall within the scope of the section 28 exemption, if they record details of comment on another administration's policy proposal or legislation. The Commissioner is satisfied that if this document (other than paragraphs 1 and 2) were to be released, then the disclosure would, or would be likely to, prejudice substantially the relationship between the Ministers and the UK Government.
38. Document 6 in Part 001 of the file is also an internal document and comments on legislation being prepared by the UK Government. The information within this document was prepared some time ago, and the Commissioner is aware that the legislation to which these comments and recommendations relate has since been passed. Having taken into account the comments and submissions made to him by the Ministers in respect of this document, and the fact that the legislation concerned is subject to review, the Commissioner is satisfied that if the information in this document were to be released it would, or would be likely to, prejudice substantially the relations between the UK Government and the Ministers in relation to future discussions regarding this legislation.
39. Document 3 of Part 002 of this file is an internal Scottish Government communication. The Commissioner is not satisfied that release of the information in this document would, or would be likely to, prejudice substantially relations between the Ministers and the UK Government. The document is several years old and the comments recorded in this document relate to a paper which was published on the UK Government's Communities and Local Government website (formerly the Office of the Deputy Prime Minister) later the same month. As a result the Commissioner cannot accept the Ministers' assertion that release of the comments in this document would, or would be likely to, have a substantially prejudicial effect.
40. As the Commissioner is satisfied that the Ministers have relied on the exemption in section 28(1) correctly in withholding information in documents 4 (other than paragraphs 1 and 2) and 6 of Part 001 of this file, he is now required to consider the application of the public interest test required by section 2(1)(b) of FOISA to these documents.

#### *Public Interest Test*

41. The exemption in section 28(1) of FOISA is subject to the public interest test required by section 2(1)(b) of FOISA. This means that, even where the exemption is judged to apply, the information must be disclosed unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
42. While the Ministers recognise that there is a public interest in access being given to information on this subject, they have also advanced the following arguments in favour of maintaining the exemption:
  - it is extremely important for the Ministers to maintain good relations with a range of other parties, including the UK government, and to be able to exchange information with them on a confidential basis, knowing that it will not be disclosed without agreement



- it is essential that the Ministers can continue to be advised confidentially on matters relating to the ongoing formulation and development of policy in an area which continues to be highly sensitive
43. The Ministers believe that, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
44. The Commissioner accepts that it is important that the Ministers maintain a good relationship with the UK Government and other administrations, and that this facilitates the provision of information on matters which, although not wholly devolved to the Ministers, are still of interest and of relevance to the Ministers, and on which the Ministers provide comment. It is important that devolved administrations can represent their interests freely to the UK Government and, equally, that Whitehall is not inhibited in informing these administrations of relevant developments as they occur. The Commissioner also appreciates that this will, from time to time, involve the exchange of information and views of some sensitivity.
45. The Commissioner also recognises, however, that since the events of 9/11, Scotland and the UK as a whole have, along with other countries, become more aware of their vulnerabilities and the incidents which may occur. The Commissioner therefore agrees with Mr Edwards that there is a strong public interest argument in providing the public with information about the measures, procedures, arrangements and discussions within government relating to the protection of the public from disasters and attacks.
46. In weighing up the public interest test arguments in relation to document 4 (other than paragraphs 1 and 2) in Part 001 of this file, the Commissioner accepts that certain of the information in this document could, if released, assist in fulfilling the public interest as to whether the UK government has taken appropriate steps in preparing the UK in the event of an emergency. However, as the Commissioner has already indicated, he also accepts that where the subject of the information is a matter which involves discussion between the UK Government and the Scottish Ministers, there is inevitably a public interest in ensuring that these discussions can continue frankly, so that the interests of both administrations can be taken into account, particularly where the information relates to ongoing discussion. In weighing up these competing interests, the Commissioner is of the view that the public interest in disclosing the information in this document is outweighed by the public interest in maintaining the exemption in section 28 of FOISA.
47. In weighing up the public interest test arguments in relation to the content of document 6 in Part 001 of this file (a draft document which records comments which have been made by the Ministers in respect of proposed legislation from Westminster), the Commissioner has noted the legislation to which these comments relate is now in force, and that this is a draft document which was prepared prior to the passage of the legislation. However, it is apparent from the submissions from the Ministers, that this legislation is currently subject to further review and discussion and the Commissioner considers that, on balance, the public interest in maintaining the exception outweighs the public interest in disclosure of the document, on the basis that disclosure may hamper discussions regarding this legislation in future and the provision of information between administrations.



48. As the Commissioner has concluded that the information in documents 4 (other than paragraphs 1 and 2) and 6 is exempt under section 28 of FOISA and, having considered the public interest test required by section 2(1) of FOISA, that the exemption should be maintained, he will not go on to consider the other exemptions which the Ministers have applied to these documents.
49. As the Commissioner has concluded that document 3 in Part 001 of this file and document 3 in Part 002 of this file are not exempt under section 28 of FOISA, he will consider the other exemptions which have been applied to these documents.

### **Section 29(1)(a) (Formulation or development of government policy)**

50. The Ministers have relied on the exemption in section 29(1)(a) of FOISA for withholding 15 documents in Part 001 of this file, and one document in Part 002 of this file.
51. The exemption in section 29(1)(a) of FOISA exempts information which relates to the formulation or development of government policy. As set out elsewhere, e.g., *Decision 075/2006 Paul Hutcheon and Scottish Executive*, the Commissioner takes the view that “formulation” means the output from the early stages of the policy process where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a Minister. “Development” is sometimes used interchangeably with “formulation”, but “development” may go beyond this stage. It may refer to the processes involved in improving on, altering or recording the effects of existing policy.
52. Given the use of the words “relates to” in the exemption, the scope of this exemption is potentially very wide. However, in considering the application of this exemption, public authorities must also take into account the requirements laid down in sections 29(2) and 29(3) of FOISA (set out in full in the Appendix).
53. In justifying their reliance on this exemption, the Ministers have relied on the same arguments as those which they advanced in relation to the exemption in section 28(1) of FOISA, with respect to ensuring that the line of communications between the UK Government and the Ministers is kept open on matters which, although mainly reserved to Westminster and only in part devolved to the Ministers, are those which the Ministers have a role in making decisions on and providing comment. The Ministers have advised that the handling of complex and sensitive matters, such as those recorded in the information withheld from Mr Edwards, requires a clear and private space in which both the UK Government and Scottish Ministers and their officials can operate.
54. The Ministers have also advised that they are of the view that the inability to communicate and exchange information with the UK Government and other devolved administrations would inhibit advice to them on the formulation and development of policy, and matters relating to radioactive waste. The Ministers have submitted that their work, and that of the other devolved administrations on this issue, is inextricably linked to the work of the UK Government.



55. In considering the content of the documents which the Ministers have exempted under section 29(1)(a), together with the submissions from the Ministers, the Commissioner is satisfied that the following documents contain information which relates to the formulation or development of government policy: documents 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 in Part 001 of this file and document 3 in Part 002 of this file.
56. As the Commissioner is satisfied that these documents are exempt in terms section 29(1)(a), he is required to go on to consider the public interest test in section 2(1)(b) of FOISA to the information contained in these documents.
57. The Ministers have provided the Commissioner with combined arguments to substantiate their view that the public interest in maintaining the exemptions in section 29(1)(a) and in sections 30(b) and 30(c) outweigh that in disclosure of the information.

*Public interest test*

58. The arguments advanced by the Ministers are summarised below:
- there is a strong public interest in high quality policy making and implementation. In order for the Government to succeed in upholding that interest, Ministers and officials need to be able to consider all available options and to debate these rigorously in order to expose all their merits and demerits
  - the candour of Ministers and officials debating matters relating to policy making would be affected by their assessment of whether these decisions would be disclosed in the near future. Such disclosure may undermine or constrain the Ministers' view on settled policy under discussion or development
  - there is a strong public interest in maintaining the integrity of the process of giving free and frank advice in this sort of case. The knowledge of possible disclosure might inhibit the provision of advice in future and the candour and freedom within which papers are prepared, deliberated and revised in future
  - there is a strong public interest in ensuring that advice in areas of ongoing policy development can take place in a non-public arena which enables rigorous and frank debate
  - it is in the public interest for decision making to be based on the best advice available
  - there is a public interest in ensuring that Ministers and officials can conduct rigorous and candid risk assessments of their policies and programmes, without premature disclosure
59. In considering the application of the public interest test in section 2(1)(b), the Commissioner has also considered the submissions Mr Edwards made as to why, in his view, the public interest lies in disclosure of this information. The Commissioner accepts that there is a public interest in allowing Ministers and officials to fully discuss information relating to the formulation and development of policy. He also accepts that where the information under discussion is of a sensitive nature there is a public interest in ensuring that Ministers and officials can discuss this in a manner which allows them to fully explore all of their options.



60. However, as noted above, he accepts Mr Edwards' argument that there is a public interest in being shown what steps the Scottish and the UK Governments are taking to protect the public against incidents which may occur. In weighing up these arguments with respect to the information in documents in question, the Commissioner accepts that the information in the following documents is sensitive and that the public interest in maintaining the exemption in this case outweighs that in disclosure of the information: documents 3, 4 (except paragraphs 1 and 2), 8, 9, 10, 12, 13, 15 and 16 of Part 001 of the file. While he recognises the public interest in knowing what actions is being taken to protect the public against risk and to act where security threats may occur, this is outweighed by the public interest in maintaining the exception in relation to the information in these documents.
61. However, the Commissioner does not consider that this is the case with all of the documents withheld under section 29(1)(a). While recognising the public interest in allowing Ministers and officials to have the ability to debate policy issues fully, without premature disclosure, the Commissioner considers that this public interest is, in some limited circumstances, outweighed by the public interest in providing information to the public as to what steps, procedures and measures the Ministers have put in place to protect the UK in the event of an emergency. As Mr Edwards has commented, we reside in a society which is open and intelligent enough to expect that certain matters will be discussed by government and the Commissioner is of the view that the public interest will not be harmed by the disclosure of the nature or content of such discussions as contained in the documents listed below. .
62. The Commissioner is accordingly of the view that the public interest in the disclosure of the information in document 4 (paragraphs 1 and 2 only) in Part 001 of this file and document 3 in Part 002 outweighs the public interest in maintaining the exemption. Documents 5, 7, 11 and 14 of Part 001 are simply emails seeking comments on draft papers and there are no sensitive policy matters in the documents which would suggest that the public interest in maintaining the exemption outweighs that in disclosure.

### **Section 30 (Prejudice to effective conduct of public affairs)**

63. Information is exempt under section 30(b) of FOISA if disclosure of the information would, or would be likely to, inhibit substantially the free and frank provision of advice (section 30(b)(i)) or the free and frank exchange of views for the purposes of deliberation (section 30(b)(ii)).
64. As the Commissioner has noted in previous decisions, e.g. *Decision 174/2006 Christine Grahame MSP and the Scottish Executive*, the standard to be met in applying these tests is high. The chief consideration is not whether the information constitutes advice or opinion, but whether disclosure of the information would, or would be likely to, inhibit substantially the provision of advice or exchange of views. The Ministers' own guidance to their staff on the application of section 30(b) points out that the word "inhibit" suggests a suppressive effect, so that communication would be less likely, more reticent or less inclusive. The Commissioner takes the view that in this context inhibit means to restrain, decrease or suppress the freedom with which advice is given, and opinions or options are expressed.



65. When considering the application of these exemptions, each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. For example, this would involve considering:
- the nature of the information
  - the subject matter of the advice or exchange of views
  - the manner in which the advice or exchange of views are expressed, and
  - whether the timing of disclosure would have any bearing; releasing advice or views whilst a decision was being considered, and for which further views were still being sought, is likely to be more substantially inhibiting than once advice has been taken.
66. Section 30(c) of FOISA exempts information which would “otherwise” prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. The use of the word “otherwise” in section 30(c) makes it clear that the exemption in section 30(c) is designed to protect situations other than those already offered protection by sections 30(a) and (b).
67. As the Commissioner stated in *Decision 017/2006 Mrs X and Angus Council*, he expects any public authority citing the exemption in section 30(c) to show the specific harm which would be caused to the conduct of public affairs by release of this information. Any damage caused by release of this information would have to be real or very likely, not hypothetical. The harm caused must be significant and not marginal.

*Sections 30(b)(i) and 30(b)(ii)*

68. The Ministers relied on one or more of the exemptions in section 30(b) of FOISA to withhold 10 documents in Part 001 of the file and one document in Part 002 of the file.
69. Where the Commissioner has already found documents to be exempt under another exemption, he will not consider whether they are also exempt under section 30(b). He will therefore consider only the following documents: 2, 2a, 2b, 2c, 5, 7 and 17 of Part 001 and document 3 in Part 002 of the file.
70. The Ministers consider that exchanges of the nature recorded in these documents would be jeopardised if the documents were released while the issues covered in these documents are still relevant to the development of current policy in a very sensitive area.
71. During the investigation, the Ministers submitted additional, general submissions on the section 30(b) exemptions, which they wished the Commissioner to take into account in all of the cases involving the Ministers (and their Executive Agencies) which were, at the time of the additional submissions, being investigated by the Commissioner.



72. The Commissioner addressed these submissions in paragraphs 23 to 31 of *Decision 089/2007 Mr James Cannell and Historic Scotland*. As these new arguments which have been submitted by the Ministers are not specific to the information under consideration, he does not intend to discuss them further here, other than to say that he has considered these fully, together with the original submissions that the Ministers provided in reaching his decision on the applicability of the exemptions in sections 30(b) to the information under consideration.
73. Additional submissions were also made by the Ministers on the section 30(b) exemptions and these have been addressed by the Commissioner in *Decision 105/2008 Mr Rob Edwards and the Scottish Ministers*. Again, while the Commissioner has not considered that these additional submissions materially affect the outcome of this particular case, he has taken them into account in coming to his decision.
74. Having considered the information withheld from Mr Edwards, together with the submissions provided by the Ministers, the Commissioner is not satisfied that the information contained within the following documents is exempt under section 30(b)(ii) of FOISA: documents 2, 2a, 2b and 2c in Part 001 of this file. The Commissioner notes, on the basis of the submissions provided to him by the Ministers, that it is not clear what, if any, of the information contained in these documents was actually disclosed. However, given that the information contained within these documents is factual and is already in the public domain, the Commissioner is not satisfied that disclosure of this information would, or would be likely to, inhibit substantially either the free and frank exchange of views for the purposes of deliberation.
75. Similarly, the Commissioner does not consider that disclosure of the information contained in documents 5 and 7 in Part 001 of this file would, or would be likely to, inhibit substantially the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. These documents record a routine communication in which comments are being sought on a draft paper. The Commissioner does not accept that such a communication would not occur in future if this document were to be released.
76. In addition, the Commissioner does not accept that the information in document 17 is exempt under either section 30(b)(i). He notes that Mr Edwards has been given copies of the responses made to the comments in document 17. It is also clear from the copies of the press articles included in the file, and which have been identified to Mr Edwards as being publicly available, that some of the information in document 17 is already in the public domain. In addition, the Commissioner is not satisfied that the substance of the information in document 17 is of such sensitivity that its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice, on this or other matters in the future.



77. The Commissioner is also not satisfied that document 3 in Part 002 of this file is exempt under either of the exemptions in section 30(b). The discussion in this document relates to a programme which was televised and a document which is (and was the day after the email was sent) publicly available. The document also relates to a draft note which was placed in the public domain. The Commissioner has also taken account of the fact that this document was prepared nearly two years prior to the Ministers' responding to Mr Edwards' request for review. Although it is not clear whether all discussion has concluded in relation to one of the areas outlined in this document, the timescale specified for completion is quoted as months, not years.

#### *Section 30(c)*

78. The Ministers relied on the exemption in section 30(c) to withhold six documents from Mr Edwards, five from Part 001 of this file and one from Part 002.
79. Given that three of these documents have already been found to be exempt, the Commissioner will consider only whether documents 5 and 7 in Part 001 and document 3 in Part 002 of the file are exempt under section 30(c).
80. The Ministers' submissions in relation to the exemption in section 30(c) are the same as those submitted in relation to section 30(b) (see above). The Ministers also submitted that disclosure of the information would prejudice substantially the effective conduct of public affairs, as it is likely to inhibit substantially the free and frank provision of advice and exchange of views.
81. For the reasons set out above, the Commissioner does not consider that disclosure of this information would, or would be likely to, inhibit substantially either the free and frank provision of advice or the free and frank exchange of views. In any event, given the inclusion of the word "otherwise" in section 30(c), the Commissioner does not consider that this is a valid argument to make in relation to this particular exemption.
82. The Commissioner therefore finds that documents 5 and 7 in Part 001 of the file and document 3 in Part 002 of the file are not exempt in terms of section 30(c).

#### **Section 31(1) – National security and defence**

83. The Ministers have cited the exemption in section 31(1) in relation to one document in Part 001 and to two documents in Part 002 of this file.
84. However, as the Commissioner is satisfied that the information in the relevant documents in Part 002 of this file (documents 1 and 2) is not held by the Ministers as a result of section 3(2)(a)(ii) of FOISA, he will only consider the application of the exemption to Part 001 (document 22).
85. Section 31(1) states that information is exempt information if exemption from section 1(1) is required for the purpose of safeguarding national security.





86. The expression 'national security' is not defined in FOISA. However, the Commissioner has considered that the phrase covers matters such as the defence of the realm; the prosecution of war; the disposition of the armed forces; nuclear weapons; security and the intelligence services and potential threats to the economic wellbeing of the UK, including terrorism, espionage and subversion.
87. However, it should be noted that section 31(1) of FOISA specifies that information is exempt if exemption is required *for the purpose of* safeguarding national security, which has a broader scope than simply information on these matters.
88. The Ministers have argued that disclosure of the information in document 22 could harm and compromise the safety of the state.
89. The Commissioner accepts that the information contained within document 22 is highly sensitive and that exemption from section 1(1) is required for the purpose of safeguarding national security. For what should be obvious reasons, the Commissioner is unable to explain in this decision notice why this should be the case.
90. As the Commissioner is satisfied that document 22 of Part 001 of the file is exempt under section 31(1), he will now go on to consider the public interest test set down in section 2(1)(b).
91. The Ministers have argued that the nature of the information is such that there is a potential for it to be misused in a manner which would not be in the public interest and that the public interest lies clearly in maintaining the exemption.
92. The Commissioner has balanced this against the general public interest arguments in favour of making information available, but considers that there is an overwhelming public interest in not disclosing this information and that, accordingly, the public interest in maintaining the exemption outweighs that in disclosure of the information.
93. The Ministers also applied the exemption in section 26 (Prohibitions on disclosure) to this document. However, given that the Commissioner has found it to be exempt under section 31(1), he will not go on to consider whether section 26 does in fact apply.

### **Application of the EIRs**

94. As noted above, and as specified in Schedule 2 to this decision, the Commissioner considers that some of the information withheld from Mr Edwards is environmental information in terms of regulation 2(1) of the EIRs. Given that the Ministers have not cited section 39(2) of FOISA for this information (they were not asked whether they wished to do so during the investigation), the Commissioner will now go on to consider whether any of the information which he considers to be environmental information which was withheld from Mr Edwards should have been made available to Mr Edwards under the EIRs.



95. In doing so, the Commissioner has considered the arguments put forward by the Ministers in relation to their reliance on section 3(2)(a)(ii) of FOISA and their submissions on the exemptions cited by them and is satisfied that these arguments can easily be transferred to the EIRs without the need to seek further comments or submissions from the Ministers.

*Regulation 2(2)(a) – environmental information not held*

96. The Ministers submitted that some of the information withheld from Mr Edwards is not held by them in terms of section 3(2)(a)(ii) of FOISA. The Commissioner has considered the almost identical provision contained in regulation 2(2)(a) of the EIRs and is satisfied that the environmental information contained in the following documents is not held by the Ministers for the purposes of the EIRs: document 1 of Part 001 and documents 1 and 2 of Parts 002 of the file.
97. As such, the Commissioner does not require the Ministers to make this information available to Mr Edwards. As with section 15 of FOISA (referred to above), the EIRs contain a duty under regulation 9(1) to provide advice and assistance – so far as it will be reasonable to expect the authority to do so – to applicants. The Commissioner considers that the Ministers did not provide such assistance to Mr Edwards.
98. Given that the Commissioner is satisfied that these three documents are not held by the Ministers for the purposes of the EIRs, he does not intend to go on to consider whether there are any equivalent exceptions under the EIRs under which the documents would be excepted from disclosure.

*Regulation 10(4)(e) – internal communications*

99. In terms of regulation 10(4)(e) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that the request involves making available internal communications. In terms of regulation 10(2) of the EIRs, this exception must be interpreted in a restrictive way (regulation 10(2)(a)) and the public authority shall apply a presumption in favour of disclosure (regulation 10(2)(b)).
100. As noted above, the Ministers applied exemptions in section 29 and 30 of FOISA to information which they were withholding from Mr Edwards. The Commissioner considers that the equivalent exception under the EIRs is the exception contained in regulation 10(4)(e) (and, from experience, the Commissioner is aware that this is the exception regularly relied on by the Ministers in such circumstances). The Commissioner is satisfied that all of the environmental information contained in the following documents comprises internal communications: documents 2, 2a, 2b, 2c, 3, 12, 13, 14, 15, 16 and 17 of Part 001 of the file. As a result, he is satisfied that they are excepted under regulation 10(4)(e).
101. However, the exception in regulation 10(4)(e) of the EIRs is subject to the public interest test required by regulation 10(1) of the EIRs. This states that a Scottish public authority may refuse a request to make environmental information available if there is an exception to disclosure under paragraph 10(4) or (5) and, in all the circumstances of the case, the public interest in making the information available is outweighed by that in maintaining the exception.



102. In coming to a decision on where the public interest lies, the Commissioner has again considered the comments and submissions made by both the Ministers and by Mr Edwards.
103. For reasons set out in when considering the public interest test in relation to FOISA above, the Commissioner is satisfied that the public interest in making the information in the following documents available is outweighed by that in maintaining the exception: documents 3, 12, 13, 15 and 16 of Part 001 of the file.
104. Given that the Commissioner did not uphold the exemptions in either sections 29 or 30 of FOISA for documents 2, 2a, 2b, 2c, 14 and 17 of Part 001 of the file, he was not required to go on to consider where the public interest lay in relation to these documents. He is, of course, required to do so now. Again, he has taken account of the public interest arguments made by both the Ministers and Mr Edwards.
105. Having weighed the public interest in favour of disclosure against the public interest in maintaining the exception, he has concluded that, in all the circumstances, the public interest in making the information available is not outweighed by the public interest in maintaining the exception.
106. Documents 2, 2a, 2b and 2c simply comprise a note of media coverage. All of the information contained in these documents is clearly in the public domain, given that it was either broadcast or published and it is difficult to conclude that the mere fact that knowing that the Ministers collate this type of information would not be in the public interest.
107. Document 14 of Part 001 is an email attaching a document. Given the presumption that the public interest lies in favour of disclosing information and it is very difficult to see any arguments for withholding this particular document, the Commissioner considers that, on balance, the public interest favours disclosure.
108. Document 17 in Part 001 is an email communication and, as indicated above, it is clear from other documents which have been released to Mr Edwards and from information which is publicly available that he has been given copies of the responses which resulted from this email. Given the presumption that the public interest lies in favour of disclosing the information and the fact that some relevant information is already in the public domain, it is difficult to see what arguments there are for withholding this document. The Commissioner therefore considers that, on balance, the public interest favours disclosure.
109. Two of the documents – documents 1 and 3 of Part 001 of the file – were also withheld by the Ministers in terms of the exemption in section 28(1) of FOISA. However, given that the Commissioner has already found that document 1 is not held for the purposes of the EIRs and that document 3 is excepted from disclosure under regulation 10(4)(e), he will not go on to consider whether they are also excepted under a further exception.



*Regulation 10(5)(a) – International relations, defence, national security or public safety*

110. In terms of regulation 10(5)(a) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to prejudice substantially, international relations, defence, national security or public safety. In terms of regulation 10(2) of the EIRs, this exception must be interpreted in a restrictive way (regulation 10(2)(a)) and the public authority shall apply a presumption in favour of disclosure (regulation 10(2)(b)).
111. As noted above, the Ministers applied the exemption in section 31(1) of FOISA to document 22. The Commissioner is satisfied that the disclosure of the environmental information contained in document 22 would, or would be likely to, prejudice substantially defence, national security or public safety if it were to be disclosed in response to an information request. As a consequence, the Commissioner is satisfied that document 22 is excepted under regulation 10(5)(a) of the EIRs.
112. As mentioned already, the exception in regulation 10(5)(a) of the EIRs is subject to the public interest test required by regulation 10(1) of the EIRs.
113. In coming to a decision on where the public interest lies in relation to this document, the Commissioner has again considered the comments and submissions made by both the Ministers and Mr Edwards.
114. For reasons set out above when considering the public interest test in relation to FOISA above, the Commissioner is satisfied that the public interest in making the information in document 22 in Part 001 of the file available is outweighed by that in maintaining the exception.

## **DECISION**

### **Freedom of Information (Scotland) Act 2002**

The Commissioner finds that the Scottish Ministers (the Ministers) partially dealt with Mr Edwards' request for information, in that some of the information withheld from Mr Edwards is not held by them in terms of section 3(2)(a)(ii) of FOISA and given that some of the information withheld is exempt from disclosure under Part 2 of FOISA. However, the Commissioner considers that not all of the information withheld from Mr Edwards is exempt under Part 2 of FOISA and that in failing to disclose this information, the Ministers failed to comply with Part 1 of FOISA and, in particular, with section 1(1).

The Commissioner also finds that, in failing to provide advice and assistance to Mr Edwards as to how to make an information request under the Freedom of Information Act 2000 for the information which is not held by the Ministers in terms of section 3(2)(a)(ii) of FOISA, the Ministers failed to comply with Part 1 of FOISA and, in particular, section 15(1).



## **Environmental Information (Scotland) Regulations 2004**

The Commissioner finds that the Ministers partially dealt with Mr Edwards' request for information, in that some of the environmental information withheld from Mr Edwards is not held by them in terms of regulation 2(2)(a) of the EIRs and given that some of the environmental information withheld is excepted from disclosure under the EIRs. However, the Commissioner considers that not all of the environmental information withheld from Mr Edwards is excepted under the EIRs and that in failing to make it available to Mr Edwards, the Ministers failed to comply with the EIRs and, in particular, with regulation 5(1).

The Commissioner also finds that, in failing to provide advice and assistance to Mr Edwards as to how to make an information request under the Environmental Information Regulations 2004 for the information which is not held by the Ministers in terms of regulation 2(2)(a) of the EIRs, the Ministers failed to comply with the EIRs and, in particular, regulation 9(1).

### **Outcome**

The Commissioner therefore requires the Ministers to disclose the following documents to Mr Edwards by 20 December 2008: documents 2, 2a, 2b, 2c, 4 (paragraphs 1 and 2 only), 5, 7, 11, 14 and 17 of Part 001 of the file and document 3 of Part 002 of the file.

The Commissioner also requires the Ministers to provide reasonable advice and assistance to Mr Edwards to identify the name of the UK Government Minister or UK Government Department which provided them with documents 1 of Part 001 and documents 1 and 2 of Part 002 of the file and to identify the information he is asking for. Again, this must be done by 20 December 2008.

## **Appeal**

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Should either Mr Edwards or the 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**5 November 2008**



## 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 002, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
  - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 002 (and no others) are to be regarded as conferring absolute exemption –
- (a) section 25;
  - (b) section 26;
  - (c) section 36(2);
  - (d) section 37; and
  - (e) in subsection (1) of section 38 –
    - (i) paragraphs (a), (c) and (d); and
    - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



### 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 –
    - ...
    - (ii) in confidence, having been supplied by a Minister of the Crown or by a department of the Government of the United Kingdom ...

### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

### 28 Relations within the United Kingdom

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially relations between any administration in the United Kingdom and any other such administration.
- (2) In subsection (1), "administration in the United Kingdom" means-
  - (a) the Government of the United Kingdom;
  - (b) the Scottish Administration;
  - (c) the Executive Committee of the Northern Ireland Assembly; or
  - (d) the National Assembly for Wales.



## 29 Formulation of Scottish Administration policy etc.

- (1) Information held by the Scottish Administration is exempt information if it relates to
  - (a) the formulation or development of government policy;
  - (b) Ministerial communications;...
- (2) Once a decision as to policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded, for the purposes of-
  - (a) paragraph (a) of subsection (1), as relating to the formulation or development of the policy in question; or
  - (b) paragraph (b) of that subsection, as relating to Ministerial communications.
- (3) In determining any question under section 2(1)(b) as respects information which is exempt information by virtue of subsection (1)(a), the Scottish Administration must have regard to the public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to the taking of a decision.
- (4) In this section-

"government policy" means-

  - (a) the policy of the Scottish Administration; and
  - (b) in relation to information created before 1st July 1999, the policy of the Government of the United Kingdom;

"the Law Officers" means the Lord Advocate, the Solicitor General for Scotland, the Advocate General for Scotland, the Attorney General, the Solicitor General and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications between Ministers and includes, in particular, communications relating to proceedings of the Scottish Cabinet (or of any committee of that Cabinet); and





"Ministerial private office" means any part of the Scottish Administration which provides personal administrative support to a Minister.

- (5) In the definitions of "Ministerial communications" and "Ministerial private office" in subsection (4), "Minister" means a member of the Scottish Executive or a junior Scottish Minister.

### **30 Prejudice to effective conduct of public affairs**

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-
  - (i) the free and frank provision of advice; or
  - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

### **31 National security and defence**

- (1) Information is exempt information if exemption from section 1(1) is required for the purpose of safeguarding national security.



## The Environmental Information (Scotland) Regulations 2004

### 2 Interpretation

(1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...



(2) For the purpose of these Regulations, environmental information is held by a Scottish public authority if it is-

(a) in its possession and it has been produced or received by that authority; or

...

and, in either case, it has not been supplied by a Minister of the Crown or department of the Government of the United Kingdom and held in confidence.

...

## **5 Duty to make available environmental information on request**

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

...

## **9 Duty to provide advice and assistance**

(1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

...

## **10 Exceptions from duty to make environmental information available-**

(1) A Scottish public authority may refuse a request to make environmental information available if-

(a) there is an exception to disclosure under paragraphs (4) or (5); and

(b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.



- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
  - (a) interpret those paragraphs in a restrictive way; and
  - (b) apply a presumption in favour of disclosure.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that

...

- (e) the request involves making available internal communications.

- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-

- (a) international relations, defence, national security or public safety;

...



## Schedule 1 – consideration under FOISA

Doc No	Document title	Exemption (s) cited by the Ministers	Exemption(s) upheld	Public interest in favour of disclosure?	Release or withhold
<b>File IMI 2/11 Part 001</b>					
1	Urgent call for briefing: Environment Council: 29/10/01, Luxembourg.	s.3(2)(a)(ii) <sup>1</sup> s.28 s.29(1)(a)	Yes n/c n/c	n/a <sup>2</sup> n/c n/c <sup>3</sup>	Withhold
2	Media Monitoring Unit note dated 22/10/01	s.30(b)	No	n/a	Release in full
2a	Duplicate of “2”	s.30(b)	No	n/a	Release in full
2b	Media Monitoring Unit note dated 19/10/01	s.30(b)	No	n/a	Release in full
2c	Media Monitoring Unit note dated 23/10/01	s.30(b)	No	n/a	Release in full
3	Email exchange (5 emails) ending with email of 29/10/01 [17:48]	s.28 s.29(1)(a)	No Yes	n/a No	Withhold
4	Attachment to “3”	s.28 s.29(1)(a)	Yes (other than paras 1 and 2) Yes	No Yes (paras 1 and 2 only)	Release paras 1 and 2 only
5	Email exchange (3 emails) ending with email of 1/11/01 [9:50]	s.29(1)(a) s.30(b) s.30(c)	Yes No No	Yes n/a n/a	Release in full
6	Attachment to “5”	s.28 s.29(1)(a)	Yes n/c	No n/c	Withhold

<sup>1</sup> S.3(2)(a)(ii) is not an exemption, but it has been referred to as an exemption in the Schedule for ease of reference

<sup>2</sup> “n/a” means “not applicable”

<sup>3</sup> “n/c” means “not considered”

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Doc No	Document title	Exemption (s) cited by the Ministers	Exemption(s) upheld	Public interest in favour of disclosure?	Release or withhold
		s.30(b)	n/c	n/c	
		s.30(c)	n/c	n/c	
7	Email exchange (4 emails) ending with email of 1/11/01 [13:22] – all but final email are duplicates	s.29(1)(a)	Yes	Yes	Release in full
		s.30(b)	No	n/a	
		s.30(c)	No	n/a	
8	Duplicate of “6” but without manuscript notes	s.29(1)(a)	Yes	No	Withhold
		s.30(b)	n/c	n/c	
		s.30(c)	n/c	n/c	
9	Email exchange (3 emails) ending with email of 1/11/01 [14:27] – all but final emails are duplicates	s.29(1)(a)	Yes	No	Withhold
10	Duplicate of “6” but without manuscript notes	s.29(1)(a)	Yes	No	Withhold
		s.30(b)	n/c	n/c	
		s.30(c)	n/c	n/c	
11	Email exchange (2 emails) ending with email of 23/5/02 [15:49]	s.29(1)(a)	Yes	Yes	Release in full
12	Attachment to “11”	s.29(1)(a)	Yes	No	Withhold
13	Email exchange (3 emails) ending with email of 24/5/02 [15:20] – all but final email are duplicates	s.29(1)(a)	Yes	No	Withhold
14	Email dated 24/5/02 [15:28]	s.29(1)(a)	Yes	Yes	Release in full
15	Duplicate of “12”	s.29(1)(a)	Yes	No	Withhold
16	Email dated 6/6/02 [14:58]	s.29(1)(a)	Yes	No	Withhold
17	Email dated 11/7/02 [14:44]	s.30(b)	No	n/a	Release in full
18	Email exchange (2 emails) ending with email of 11/7/02 [15:04] – earlier email is a duplicate	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			

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Mr Rob Edwards  
and the Scottish Ministers



Doc No	Document title	Exemption (s) cited by the Ministers	Exemption(s) upheld	Public interest in favour of disclosure?	Release or withhold
19	Email exchange (2 emails) ending with email of 11/7/02 [16:48] – earlier email is a duplicate	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			
20	Email exchange (2 emails) ending with email of 12/7/02 [9:49] – earlier email is a duplicate	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			
21	Email exchange (3 emails) ending with email of 12/7/02 [10:09] – all except final emails are duplicates	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			
22	Email dated 30/9/02	s.31(1) s.26(a)	Yes n/c	No n/c	Withhold
<b>File IMI 2/11 Part 001</b>					
1	Letter dated 28/11/02	s.3(2)(a)(ii) s.28 s.31(1)	Yes n/c n/c	n/a n/c n/c	Withhold
2	Attachment to “1”	s.3(2)(a)(ii) s.28 s.31(1)	Yes n/c n/c	n/a n/c n/c	Withhold
3	Email exchange (2 emails) ending with email of 13/5/04 [11:42]	s.28 s.29(1)(a) s.30(b) s.30(c)	No Yes No No	n/a Yes n/a n/a	Release in full



## Schedule 2 – consideration under the EIRs

Doc No	Document title	Exception(s)	Exception(s) upheld?	Public interest in favour of disclosure?	Release or withhold
<b>File IMI 2/11 Part 001</b>					
1	Urgent call for briefing: Environment Council: 29/10/01, Luxembourg.	reg. 2(2)(a) <sup>4</sup> reg. 10(4)(e)	Yes n/c	n/a n/c	Withhold
2	Media Monitoring Unit note dated 22/10/01	reg. 10(4)(e)	Yes	Yes	Release in full
2a	Duplicate of “2”	reg. 10(4)(e)	Yes	Yes	Release in full
2b	Media Monitoring Unit note dated 19/10/01	reg. 10(4)(e)	Yes	Yes	Release in full
2c	Media Monitoring Unit note dated 23/10/01	reg. 10(4)(e)	Yes	Yes	Release in full
3	Email exchange (5 emails) ending with email of 29/10/01 [17:48]	reg.10(4)(e)	Yes	No	Withhold
12	Attachment to “11”	reg. 10(4)(e)	Yes	No	Withhold
13	Email exchange (3 emails) ending with email of 24/5/02 [15:20] – all but final email are duplicates	reg. 10(4)(e)	Yes	No	Withhold
14	Email dated 24/5/02 [15:28]	reg. 10(4)(e)	Yes	Yes	Release in full
15	Duplicate of “12”	reg. 10(4)(e)	Yes	No	Withhold
16	Email dated 6/6/02 [14:58]	reg. 10(4)(e)	Yes	No	Withhold
17	Email dated 11/7/02 [14:44]	reg. 10(4)(e)	Yes	Yes	Release in full
18	Email exchange (2 emails) ending with email of 11/7/02 [15:04] – earlier email is a duplicate	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			
19	Email exchange (2 emails) ending with email of 11/7/02 [16:48] – earlier email is a duplicate	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			

<sup>4</sup> Reg.2(2)(a) is not an exception, but it has been referred to as an exception in this Schedule for ease of reference



Decision 140/2008  
Mr Rob Edwards  
and the Scottish Ministers



Doc No	Document title	Exception(s)	Exception(s) upheld?	Public interest in favour of disclosure?	Release or withhold
20	Email exchange (2 emails) ending with email of 12/7/02 [9:49] – earlier email is a duplicate	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			
21	Email exchange (3 emails) ending with email of 12/7/02 [10:09] – all except final emails are duplicates	n/a – already disclosed except for one email which is a duplicate of “17” – see consideration of “17” above			
22	Email dated 30/9/02	reg. 10(5)(a)	Yes	No	Withhold

**File IMI 2/11 Part 001**

1	Letter dated 28/11/02	reg.2(2)(a)	Yes	n/a	Withhold
2	Attachment to “1”	reg.2(2)(a)	Yes	n/a	Withhold