



Scottish Information  
Commissioner

**Decision 150/2007 Mr Paul Hutcheon and the Scottish Parliamentary  
Corporate Body**

*Minutes and papers for Directors' meetings over a specific time period*

**Applicant: Mr Paul Hutcheon**  
**Authority: Scottish Parliamentary Corporate Body**  
**Case No: 200700719**  
**Decision Date: 23 August 2007**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
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## **Decision 150/2007 Mr Paul Hutcheon and the Scottish Parliamentary Corporate Body**

### ***Requests for minutes and papers for Directors' meetings – requests refused as SPCB claimed clarification was required – refusal not upheld by Commissioner***

#### **Relevant Statutory Provisions and Other Sources**

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1 (General entitlement); 8 (Requesting Information); 15 (Duty to provide advice and assistance).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

#### **Facts**

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Mr Paul Hutcheon submitted a request to the Scottish Parliamentary Corporate Body (SPCB) for all minutes and papers of every Directors' meeting over a specified time period. He later modified the period in respect of which he required the papers. The SPCB responded seeking further details from Mr Hutcheon to enable it to identify the particular information that he was seeking. Mr Hutcheon responded to the SPCB to say that he was happy with the requests that he had made, which he regarded as reasonable and specific. The SPCB then advised Mr Hutcheon that because he had not provided it with further details to enable it to identify the information that he was seeking, it would not be processing his requests further.

Mr Hutcheon was not satisfied with this response and asked the SPCB to review its decision. The SPCB carried out a review and, as a result, notified Mr Hutcheon that it upheld its original decision that it would not process his requests any further. Mr Hutcheon remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPCB had failed to deal with Mr Hutcheon's requests for information in accordance with Part 1 of FOISA, and in particular had not acted reasonably in requiring further information from him. The Commissioner required the SPCB to consider Mr Hutcheon's requests for information again.



## Background

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1. On 7 February 2007, Mr Hutcheon wrote to the SPCB requesting the following information:
  - All minutes of every Directors' meeting since May 1<sup>st</sup> 2003
  - All the papers of every Directors' meeting since May 1<sup>st</sup> 2003Mr Hutcheon asked that these be considered as two individual requests under FOISA.
2. On 13 February 2007, Mr Hutcheon narrowed down the second of his requests to the SPCB. Mr Hutcheon advised the SPCB that he was now only seeking the papers for all Directors' meetings in 2006, and the papers for all Directors' meetings in 2007. Mr Hutcheon again specified that he wanted these new narrowed down requests to be considered as two individual requests under FOISA, in addition to the first request that he had made regarding the meeting minutes.
3. On 22 March 2007, the SPCB wrote to Mr Hutcheon in response to his requests for information. In this response the SPCB advised Mr Hutcheon that his requests for information were framed too broadly and therefore did not properly identify the information he was seeking. It required him to provide details of the specific information that he was seeking within the Directors' Group papers and minutes, to enable it to respond to his requests.
4. Mr Hutcheon responded to the SPCB on 28 March 2007. In this response Mr Hutcheon reiterated his requests, stating that he felt them to be reasonable and that he could not be more specific.
5. The SPCB subsequently made a formal response to Mr Hutcheon's requests for information on 3 April 2007. In this response, the SPCB advised that because Mr Hutcheon had not provided it with additional information to enable it to identify and locate the requested information, it would not be processing his requests any further.
6. On 3 April 2007, Mr Hutcheon wrote to the SPCB requesting a review of its decision.
7. On 2 May 2007, the SPCB wrote to notify Mr Hutcheon of the outcome of its review. In its response, the SPCB advised Mr Hutcheon that it was upholding its earlier decision, without modification, in respect of his requests for information.



8. On 21 May 2007, Mr Hutcheon wrote to my Office, stating that he was dissatisfied with the outcome of the SPCB's review and applying to me for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Hutcheon had made requests for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its responses to those requests. The case was allocated to an investigating officer.

## **The Investigation**

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10. The investigating officer wrote to the SPCB on 20 June 2007, giving it notice of the application and requesting its comments in terms of section 49(3)(a) of FOISA. In particular, the SPCB was asked for a sample of the information withheld and detailed arguments as to why it had required clarification of Mr Hutcheon's request.
11. A response was received from the SPCB on 30 July 2007.

## **Submissions from the SPCB**

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12. In its submissions to me, the SPCB advised that it was clear from the outset that the information that was requested by Mr Hutcheon related to complete classes of documents. As a result, the requests were too broad for it to meet the provisions of the Act in responding. The SPCB submitted that because Mr Hutcheon did not define the nature or subject matter of the information being sought sufficiently to enable it to identify the information, it was not in a position to respond appropriately.
13. The SPCB has explained that in an effort to resolve the issue of it being unable to respond appropriately, it sought clarification from Mr Hutcheon as to the specific information that he was seeking within the minutes and papers that he had requested. The SPCB submitted that it considered its request for such clarification to be in line with Section 1 of FOISA and therefore a reasonable request. The SPCB advised that because Mr Hutcheon did not specify what information he wanted, it wrote to him to say that it would not be processing his requests any further.



## **Submissions from Mr Hutcheon**

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14. In his appeal to me, Mr Hutcheon has clearly outlined why he is dissatisfied with the response that he has received from the SPCB to his requests for information. In particular, he has maintained that his requests did not require clarification

## **The Commissioner's Analysis and Findings**

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15. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Hutcheon and the SPCB and am satisfied that no matter of relevance has been overlooked.
16. As indicated above, the SPCB refused to process Mr Hutcheon's information requests on the basis that they were too broad and referred to complete classes of documents. The SPCB submitted that as a result of the framing of Mr Hutcheon's requests it was unable to identify the information that he was seeking and therefore be in a position to respond appropriately to his requests.
17. In carrying out an investigation into Mr Hutcheon's application to me, I must consider in the first instance whether the requests made by Mr Hutcheon were in line with the terms of section 8 of FOISA, which sets out the criteria which must be fulfilled for an information request to be valid. If I am satisfied that the requests were valid, I then need to consider whether the SPCB was reasonable in requiring clarification from Mr Hutcheon.

### **Section 8 – Requesting information**

18. Section 8 of FOISA sets out the criteria that need to be fulfilled for a request for information to be valid.



19. Having considered the three requests for information that were submitted by Mr Hutcheon, I am satisfied that these are valid in terms of section 8 of FOISA. This is the case as it is clear that Mr Hutcheon made his requests to the SPCB in writing, and that in doing so he provided his name and address, as he is required to do, and that he also described the information that he was requesting. Whether that description was adequate to enable the SPCB to identify and locate the information requested is, of course, a matter I require to go on and consider, but for the purposes of section 8 I am satisfied that the request contained a description of the information Mr Hutcheon was seeking.
20. As I am satisfied that the requests that Mr Hutcheon made to the SPCB were valid, I am now required to consider whether the SPCB acted reasonably in requesting clarification from Mr Hutcheon.

### **Section 1 – General entitlement**

21. Section 1(3) of FOISA allows a Scottish public authority to seek further information from an applicant to enable it to identify and locate the information an applicant has requested. That further information must, however, be required for that purpose. Section 1(3) also states that provided the applicant has been told specifically what further information is required, and the requirement is reasonable, then the public authority does not have to provide the applicant with the requested information until such time as it has received the further information it requires.
22. In this case, the SPCB wrote to Mr Hutcheon and asked for details of the specific information he was seeking within the minutes and papers he had requested. Following Mr Hutcheon responding to reiterate his requests and to state that he was happy with them as being reasonable and specific, the SPCB advised that as he had not provided it with the additional information that it had requested his requests would not be processed any further.
23. As mentioned at paragraphs 12 and 13 above, in its submissions to me the SPCB argued that because Mr Hutcheon's requests were for complete classes of documents (i.e. all minutes and all papers within a specified timeframe) these were too broad for it to meet the provisions of the Act. The SPCB submitted that this was the case because the request for all minutes and all papers did not define the nature or subject matter of the information being sought sufficiently, and as a result it could not identify the information requested and was therefore not in a position to respond appropriately.



24. I cannot accept or uphold this argument from the SPCB. It is commonplace for certain information to be described in the fashion employed by Mr Hutcheon. The SPCB would have no difficulty in understanding or responding to a request for minutes of meetings of the Corporate Body and all papers considered at those meetings. In fact it publishes such material. It is difficult to see why then it could not deal with a similar request but for meetings of a differently named group.
25. When my investigating officer wrote to the SPCB to seek its submissions on this application, she also asked for copies of a sample of the information which had been requested by Mr Hutcheon. Having considered the submissions that I have received in response from the SPCB, along with the terms of the request for information, I am satisfied that the SPCB should have had no difficulty (and did not in fact have any difficulty) in being able to identify and locate the information requested by Mr Hutcheon.
26. In any event, I cannot accept that the SPCB provided Mr Hutcheon with a specific and reasonable requirement for clarification for the purposes of section 1(3). What he was in fact asked to do was to narrow down his request on a basis that cannot have been possible for him without further clarification from the SPCB as to the information contained within the relevant minutes and papers. No such clarification was provided and therefore I have to question whether the SPCB complied fully with its duty to provide advice and assistance under section 15 of FOISA in dealing with Mr Hutcheon's requests.
27. In all the circumstances of this case, I do not consider that it was necessary for the SPCB to require additional information from the applicant to enable them to enable it to identify and locate the information requested, or for that matter that it made a specific and reasonable requirement to the applicant for such information. Therefore, I am not satisfied that it was appropriate for the SPCB to apply section 1(3) of FOISA to Mr Hutcheon's requests and therefore am not satisfied that the SPCB was entitled to refuse to process the requests further on that basis.
28. I appreciate that the SPCB may have found Mr Hutcheon's requests burdensome to deal with, but that of itself did not entitle it to refuse to deal with them on the basis that further clarification was required. Scottish public authorities should be aware that there are more appropriate provisions of FOISA for dealing with requests for which compliance would present a genuine and unjustifiable burden or where they believe information should not be disclosed.



## **Decision**

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I find that the Scottish Parliamentary Corporate Body (the SPCB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to further process the information requests submitted by Mr Hutcheon on the basis that he had refused to provide further information reasonably required in terms of section 1(3) of FOISA.

I therefore require the SPCB to reconsider Mr Hutcheon's requests for information and to respond to them appropriately in accordance with Part 1 of FOISA, within 45 days of receipt of this decision notice.

## **Appeal**

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Should either Mr Hutcheon or the SPCB 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 decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**23 August 2007**





## 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- (3) If the authority –
  - (a) requires further information in order to identify and locate the requested information; and
  - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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.
- (5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).
- (6) This section is subject to sections 2, 9, 12 and 14.

##### 8 Requesting information

- (1) Any reference in this Act to “requesting” information is a reference to making a request which-



- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) states the name of the applicant and an address for correspondence; and
  - (c) describes the information requested.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph), a request is to be treated as made in writing where the text of the request is-
- (a) transmitted by electronic means;
  - (b) received in legible form; and
  - (c) capable of being used for subsequent reference.

## **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.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).