

# Decision Notice

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## **Decision 271/2016: Mr Daniel Sanderson and the Scottish Ministers**

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### **Naomi Eisenstadt's work as the Government's poverty advisor**

Reference No: 201600609

Decision Date: 19 December 2016



## Summary

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The Ministers were asked for a range of information relating to Naomi Eisenstadt's work as the Scottish Government's Poverty Advisor. This included correspondence, reports, briefing notes and minutes of meetings. The Ministers disclosed some information and withheld the remainder because it was personal data or would prejudice the conduct of public affairs.

Not all of the information identified by the Ministers fell within the scope of the request, so the Commissioner did not consider that information in her decision. She also did not consider the withholding of personal information as this was not part of the application to her.

During the investigation, the Ministers claimed that some of the information was otherwise accessible to the requester without the need for an information request, so should be withheld for that reason.

In considering the information which was covered and withheld, the Commissioner did not agree fully with the Scottish Ministers. In relation to the information withheld as otherwise accessible, she found that the majority of it was not accessible and so had been wrongly withheld. She required its disclosure. In relation to the information relating to the conduct of public affairs, the Commissioner did not accept that disclosure would result in the prejudice claimed by the Scottish Ministers so required them to disclose it.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(a) (Effect of exemptions); 15 (Duty to provide advice and assistance); 25(1) (Information otherwise accessible); 30(c) (Prejudice to effective conduct of public affairs)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 13 January 2016, Mr Sanderson made two requests for information to the Scottish Ministers (the Ministers).

### Request 1

*Under Fol, could you please provide me with copies of all written correspondence between Naomi Eisenstadt, the Scottish Government's poverty advisor, and Scottish Ministers or their officials, since September 8.*

*This should include any formal reports written by Ms Eisenstadt to inform policy, as well as any informal observations/advice she has provided.*

### Request 2

*Under Fol, could you please provide me with copies of briefing notes prepared for ministers ahead of any meetings with Naomi Eisenstadt, the Scottish Government's poverty advisor, which have taken place since she was appointed in June.*

*Could you also provide me with minutes or any other official record of any meetings, including with the First Minister, deputy first minister, social justice secretary and any other minister, which have taken place with Ms Eisenstadt since she was appointed.*

2. The Ministers responded separately to both requests on 11 February 2016. They disclosed information in relation to both requests and withheld information under sections 30(c) and 38(1)(b) of FOISA (respectively, exemptions relating to prejudice to effective conduct of public affairs, and personal information).
3. On 29 February 2016, Mr Sanderson emailed the Ministers requesting a review of their decision in relation to both requests. He considered the exemption in section 30(c) of FOISA did not apply and the public interest favoured disclosure of the information. (Mr Sanderson did not request a review of the decision to withhold personal information.)
4. The Ministers notified Mr Sanderson of the outcome of their reviews on 23 March 2016. They issued a single review response in relation to both requests. They upheld their previous decision on section 30(c) of FOISA without modification, but provided additional explanation of their reasons for withholding the information.
5. On 5 April 2016, Mr Sanderson applied to the Commissioner for a decision in terms of section 47(1) of FOISA as he did not consider that the exemption in section 30(c) applied to the withheld information (as argued in his requests for review). He also believed that the public interest favoured disclosure.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Mr Sanderson made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to her for a decision.
7. On 19 April 2016, the Ministers were notified in writing that Mr Sanderson had made a valid application. The Ministers were asked to send the Commissioner the information withheld from Mr Sanderson. The Ministers provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions. These questions focused on the searches carried out to identify information covered by the request, the withheld information provided to the Commissioner, and the exemption in section 30(c). The Ministers responded on 17 June 2016.
9. Mr Sanderson was invited to explain why, in his view, the withheld information should be disclosed, and did so.
10. In their submissions, the Ministers stated that some of the withheld information was “otherwise accessible” to Mr Sanderson, and therefore exempt from disclosure under FOISA in line with section 25(1). On 18 July 2016, the investigating officer requested submissions on this point. The Ministers were also asked to indicate which parts of the withheld information was considered to be otherwise accessible to Mr Sanderson, and whether the exemption in section 30(c) also applied to this information. The Ministers responded on 2 August 2016.

11. The Ministers contacted Mr Sanderson on 1 August 2016 and provided him with weblinks to published information which had been used as a basis for text within the withheld documents.
12. Mr Sanderson was asked to comment on the information which was considered otherwise accessible by the Ministers, and did so. His comments are considered later in this decision.

## **Commissioner's analysis and findings**

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13. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Sanderson and the Ministers. She is satisfied that no matter of relevance has been overlooked.

### **Background to request**

14. On 23 June 2015, the Scottish Government appointed Ms Eisenstadt as its first Poverty Advisor<sup>1</sup>. Her remit was to lead the debate on addressing poverty in Scotland, raise awareness of the realities of living in poverty, and report to the Ministers on how to alleviate the problem across the country.
15. On 20 January 2016, the Scottish Government published Ms Eisenstadt's report<sup>2</sup>. On 21 June 2016, Ms Eisenstadt was re-appointed<sup>3</sup> as the Scottish Government's Independent Poverty Advisor for a further 12 months.

### **Information falling in scope**

16. The Ministers identified 17 documents and attachments falling within scope of Mr Sanderson's request. Redacted versions of many of these documents were disclosed to Mr Sanderson in the Ministers' initial response.
17. In their submissions, the Ministers provided an explanation of the searches they had conducted to identify the information falling within scope of the request. The Commissioner is satisfied, on the basis of these submissions, that the Ministers identified all relevant information falling in scope.
18. Having considered the information in the 17 documents in detail, together with the Ministers' responses, the Commissioner has concluded that only some of the information in documents 1, 2, 3, 14 and 15 falls to be considered in this decision. The remaining information has been excluded for the following reasons:
  - (i) it falls outwith the scope of Mr Sanderson's request; or
  - (ii) it is the personal information of third parties (which Mr Sanderson accepted could be withheld); or
  - (iii) it is duplicated within other documents.

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<sup>1</sup> <http://news.scotland.gov.uk/News/First-Minister-appoints-poverty-adviser-1a68.aspx>

<sup>2</sup> <http://news.scotland.gov.uk/News/Poverty-advisor-report-published-217a.aspx>

<sup>3</sup> <https://www.pressandjournal.co.uk/fp/news/politics/holyrood/980108/sturgeon-launches-new-bid-tackle-child-poverty/>

## **Section 25(1) of FOISA – Information otherwise accessible**

19. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.

### *The Ministers' submissions*

20. The Ministers applied section 25(1) of FOISA to some of the information within documents 1, 2 and 3. Document 1 is described as an internal paper setting out the nature of the problem. Document 2 is an internal briefing paper providing Ms Eisenstadt's views on what the Scottish Government was currently doing to tackle poverty. Document 3 is described as bringing together documents 1 and 2 into an early draft of her report "Shifting the Curve".
21. During the investigation, the Ministers stated that Ms Eisenstadt's final, published, report sets out in detail all of her conclusions and her final advice to the First Minister. They submitted that most of the content in the earlier drafts of that report is the same as that provided in the final report and, accordingly, was exempt from disclosure under section 25(1) because the substance of Ms Eisenstadt's conclusions and advice has been published in full.
22. The Ministers provided annotated versions of documents 1, 2 and 3 which they had marked up to show what information was considered to be identical or only slightly different from the published report (and therefore considered exempt from disclosure under section 25(1) of FOISA). The Ministers argued that there is so little difference between the information in documents 1, 2 and 3 and the published report that disclosure of these few changes would not be "useful or satisfactory to Mr Sanderson's understanding of the draft versus the published report".
23. The Ministers submitted that the final report has been published on the Scottish Government's website and is easily accessible to all parties, including Mr Sanderson. They did not consider it appropriate to provide Mr Sanderson with redacted documents "as it would only provide him with duplicate information and...would negate the purpose of applying the section 25(1) exemption".
24. The Ministers accepted that it was not obvious to Mr Sanderson where he might locate the parts of the withheld information which have been published elsewhere, and provided him with website links during the Commissioner's investigation

### *The Commissioner's findings*

25. The Commissioner has considered the information in the published reports and documents obtainable from the weblinks provided by the Ministers. She has compared the three withheld documents and the published information, and notes that there are inconsistencies between the published information identified by the Ministers and the withheld documents.
26. The Commissioner is not satisfied that the Ministers have correctly applied the exemption in section 25(1) of FOISA. This exemption does not apply simply because the same information appears, in another context, in documents which are publicly available. The key question is whether the information withheld under the exemption is "otherwise accessible" to the applicant, and can be reasonably obtained by them without requesting it under FOISA. In deciding this, the context created by the document in which the information appears must be taken into account: the context may give the information a particular significance, which would not be obvious if the same information appeared in a completely different document.

27. In this case, Mr Sanderson asked specifically for information contained in Ms Eisenstadt's reports, not general information about poverty, even though there may be an overlap or duplication between the two. The context created by virtue of the information appearing in Ms Eisenstadt's reports may give the information additional significance.
28. The Commissioner is disappointed that the Ministers have not provided Mr Sanderson with marked up copies of documents 1, 2 and 3 showing which information they consider to be already available in published documents (i.e. as provided to the Commissioner for her investigation). The Ministers provided Mr Sanderson with links to the online content containing the information, but this is not enough to allow him to understand the context in which the information appears in documents 1, 2 and 3.
29. Document 1 is completely different from the final published report. It is a report which was produced early in Ms Eisenstadt's first term as the Government's Poverty Advisor. The Commissioner finds that the Ministers were wrong to rely upon section 25(1) of FOISA to withhold information within document 1, given that there are significant differences between document 1 and the final published report, and given that it would not be clear to Mr Sanderson exactly what information has been withheld in each part of the document.
30. Document 2 is a draft of the published report. The Commissioner accepts that there is a closer relationship between document 2 and the final report than there is with document 1, but her conclusions are the same: the information withheld from document 2 under section 25(1) is not "otherwise accessible" to Mr Sanderson as he has not been informed exactly what information has been withheld from each part of the document and therefore cannot understand what he can find elsewhere.
31. Document 3 is the final draft of the poverty report before the published version. Having compared document 3 with the published report and, specifically, the information which the Ministers considered exempt under section 25(1) of FOISA, the Commissioner accepts there are substantial similarities, but also notes there are differences.
32. In reaching a view on whether information was correctly withheld from document 3 under section 25(1), the Commissioner first considered whether the Ministers complied with the requirement to provide applicants with reasonable advice and assistance (section 15 of FOISA). She has also considered the guidance on this issue in the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code of Practice<sup>4</sup>).
33. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty if it conforms with the Section 60 Code of Practice.
34. Section 9.4 of the Section 60 Code states:

*Where a public authority refuses a request on the grounds that the information is otherwise accessible, it must send the applicant a refusal notice which acknowledges that it holds the information and explains why the exemption at section 25(1) of FOISA ... applies.*

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<sup>4</sup> <http://www.gov.scot/About/Information/FOI/Section60Code/s60codeofpractice>

*The authority should not assume that the applicant will know where and how the information can otherwise be obtained. If the information is already publicly available (e.g. on the authority's website) the authority should tell the applicant how to access it and provide adequate signposting, for example, providing direct links to online information. In all cases the authority should bear in mind its general duty to provide advice and assistance to applicants.*

35. As the Section 60 Code indicates, in situations where a public authority directs a requester to a place where the requested information is already accessible, it is critical that the authority gives the requester sufficient information to enable them to find it. To this end, it is vital for the authority to comply with the duty to provide advice and assistance. The Commissioner concludes that the Ministers failed to follow the guidance in the Section 60 Code and also failed to comply with section 15(1) of FOISA, by refusing to provide Mr Sanderson with an annotated version of document 3, showing which parts of the information withheld under section 25(1) of FOISA are duplicated in the final, published version of the report.
36. The Commissioner accepts that some of the information in document 3 is duplicated in the final, published version of the poverty report, and that the Ministers were entitled to withhold it under section 25(1) of FOISA. However, this exemption was also applied to information in document 3 which does not appear in the final report, or appears in a significantly different context: in these instances, the Commissioner finds that the exemption in section 25(1) cannot be upheld. As the Ministers have not relied upon any other exemption to withhold the information, the Commissioner requires the Ministers to disclose this information to Mr Sanderson.
37. The Commissioner concludes that the Ministers incorrectly relied upon section 25(1) of FOISA in relation to information in documents 1 and 2 and some information in document 3. As the Ministers did not rely upon any other exemption in conjunction with section 25(1) of FOISA to withhold the information considered above, the Commissioner requires this information to be disclosed to Mr Sanderson.
38. The Ministers withheld the remaining information in documents 1, 2, 3, 14 and 15 under section 30(c) of FOISA. This exemption will be considered next.

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

39. Section 30(c) of FOISA exempts information if its disclosure “would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs”. The use of the word “otherwise” distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
40. In order for the exemption in section 30(c) to be upheld, the prejudice caused by disclosure must be substantial and of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case-by-case basis, taking into consideration the content of the information and all other relevant circumstances (which may include the timing of the request).

### *The Ministers' submissions*

41. The Ministers submitted that the final report by Ms Eisenstadt, which has been published, sets out in detail all of her conclusions and her final advice to the First Minister.
42. The Ministers stated that the section 30(c) exemption was applied only to the parts of the withheld documents which are different to the published report because they reflect Ms Eisenstadt's initial developing thinking while she was working on her report, rather than her settled and fully considered conclusions. Disclosure of these drafts would be likely to draw attention to Ms Eisenstadt's initial thoughts, which have moved on considerably since the drafts were written and do not represent her settled conclusions.
43. The Ministers argued that disclosure would substantially prejudice the work undertaken by Ms Eisenstadt as it would be likely to lead to fruitless debate on the significance or otherwise of minor changes of wording. Disclosing the limited amount of withheld information would add little to public knowledge or understanding of the issues and would undermine the key points and messages in the final publication. They considered that disclosure would provide an unhelpful distraction from the important advice and messages set out in the published report and substantially prejudice its purpose and conclusions. It would also substantially prejudice the ability of the Scottish Government to conduct future policy development and to progress future important work on poverty in Scotland.
44. The Ministers submitted that there may be little debate on the report at this moment. However, it will inform future work by the Scottish Government on dealing with poverty and disclosure of the earlier workings in preparation of the published report would substantially prejudice the ability of the Scottish Government to use this report to scope out and propose policy development in the future.
45. The Ministers considered that disclosure of an early draft of a published report, containing early thinking and/or information for discussion, would be likely to inhibit substantially the future free and frank provision of advice and exchange of views for the purpose of deliberation and substantially prejudice the ability of the Independent Advisor to provide sound advice as requested by the Scottish Ministers.
46. The Ministers also argued that disclosure of the withheld information would harm the Scottish Ministers' ability to seek independent advice, if the advisors were to feel that their work could be compromised by the disclosure of their early stage thinking, to the detriment of their considered published report.

### *Mr Sanderson's arguments*

47. Mr Sanderson submitted that the Ministers had not met the test in section 30(c) for withholding the information. He accepted that the Scottish Government may not welcome the prospect of debate, following disclosure, but he did not accept that such debate would substantially prejudice the conduct of public affairs, as required for the exemption in section 30(c) to apply. He took the view that it is not for the Scottish Government to judge whether the debate would be fruitless, and considered that any debate on the topic of how poverty can be tackled would have some value.
48. Mr Sanderson noted that the Ministers considered that disclosure may lead to an "unhelpful distraction". He argued that, even if this was the case, an "unhelpful distraction" is a somewhat lower threshold than substantial prejudice to the conduct of public affairs.



49. Mr Sanderson referred to guidance on the Commissioner's website about the application of section 30(c) of FOISA<sup>5</sup> (summarised above at paragraph 40). He did not consider the Ministers had evidenced a genuine link between disclosure and harm.
50. In Mr Sanderson's view, the Ministers were attempting to downplay the significance of the withheld documents, describing them as "informal" when, he submitted, they were written reports submitted to the First Minister which may well have had, or continue to have, influence on public policy, particularly given that they were prepared in the run-up to the election campaign.
51. He also pointed out that Ms Eisenstadt was paid for this work with public money, and argued that it is an important principle that, wherever possible, the public should be given access to work it funds.
52. Mr Sanderson noted that one of the reasons why the Ministers had refused to disclose the information was in the interests of "protecting a private space within which Ms Eisenstadt could develop her thinking before reaching the settled and considered conclusions set out in her final report." He submitted that a distinction should be made between private thoughts, and reports submitted to the First Minister. Mr Sanderson asserted that he was not seeking Ms Eisenstadt's private thoughts; he was seeking papers that included, among other things, summaries of her recommendations to the First Minister.
53. Mr Sanderson also referred to the passage of time since Ms Eisenstadt's report had been published, and commented that the political situation has moved on significantly with a new parliament having been elected. The Commissioner notes Mr Sanderson's comments, but her decision must be based on the circumstances that prevailed at the date the Ministers issued their review response (23 March 2016).

#### *The Commissioner's view*

54. Each request must be considered on a case-by-case basis. Relevant considerations include the content of the withheld information (its nature, subject matter, etc.) and when the request was made: disclosing advice or views when a decision has not yet been made may cause more harm than disclosing it after a decision has been reached.
55. In this instance, the reports and briefings were written by a renowned expert on poverty<sup>6</sup>, employed by the Scottish Government as an Independent Advisor and tasked with leading the debate on addressing poverty in Scotland. Given the importance of this debate, the Commissioner is sympathetic to Mr Sanderson's view that even Ms Eisenstadt's early reports and briefings may carry significant weight and interest.
56. It is often essential for the Ministers to receive input, guidance or reports from experts on significant issues, and the Commissioner does not dispute that on occasions it is appropriate for such information to be exempt from disclosure, particularly before the final report has been made public. However, she notes that, in this case, Ms Eisenstadt was clearly willing to share some of her thinking before the final report was published. For example, in October 2015, she took part in a lecture organised by Poverty Alliance as part of Challenging Poverty Week, and is reported to have spoken about what she saw as the biggest challenges facing Scotland in addressing poverty, and what the Government could do about it.<sup>7</sup>

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<sup>5</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section30/Section30.aspx>

<sup>6</sup> <http://www.education.ox.ac.uk/about-us/directory/naomi-eisenstadt/>

<sup>7</sup> Scottish Fiscal and Economic Studies (<https://scotfes.com/page/2/>)

57. Having considered the withheld information, the Commissioner notes that there is no indication within the reports and briefings that the contents should remain confidential or that Ms Eisenstadt's suggestions should not be disclosed.
58. The Commissioner has considered the Ministers' argument that disclosure of the withheld information would be likely to lead to "fruitless debate" on minor changes in wording of Ms Eisenstadt's recommendations, and that this would distract from the important advice contained in the published report. The Ministers have not explained why they believe this to be a likely consequence of disclosure. The Commissioner takes the view that even if such debate occurred, it is unlikely to overshadow or detract from the importance and implications of the advice in the final published version of the report, given the public interest in tackling poverty in Scotland.
59. Similarly, the Commissioner is not persuaded that, as the Ministers have argued, disclosure of the withheld information would prejudice their ability to use the published report to scope out policy development or to conduct future policy development on poverty in Scotland. The reasons given by the Ministers are that disclosure would lead to discussions, queries and further requests on thinking by Ms Eisenstadt which has been superseded, or on minor wording changes. Even if these were consequences of disclosure, the Commissioner does not accept that they would be likely to prevent or seriously hinder future policy development on such an important subject. It was for the Ministers to argue and evidence that disclosure would result in substantial prejudice to the effective conduct of public affairs, and in this respect the Commissioner finds the Ministers' submissions fell short.
60. The Commissioner notes that part of the argument put forward by the Ministers in support of section 30(c) describes the harm which disclosure would be likely to cause in terms of substantial inhibition to the free and frank provision of advice and exchange of views for the purpose of deliberation. These arguments relate to the exemptions in section 30(b) of FOISA, not section 30(c). In any event, the Commissioner does not accept that disclosure of the information in this case is likely to have this effect, given that Ms Eisenstadt had already published her final report, and given that she was prepared to discuss her views before it was published.
61. In the absence of any persuasive evidence or explanation from the Ministers, the Commissioner cannot accept that disclosure of the remaining withheld information in documents 1, 2, 3, 14 and 15 would, or would be likely to, prejudice substantially the effective conduct of public affairs. Having considered all the relevant submissions, therefore, the Commissioner does not accept that the Ministers were correct to withhold the information under the exemption in section 30(c) of FOISA.
62. Given that the Commissioner does not accept that section 30(c) applies, she is not required to consider the public interest test in section 2(1)(b) of FOISA.

## Information to be disclosed

63. The Commissioner has concluded:

- (i) Documents 1, 2, 14 and 15 (excluding the first page of document 15, which falls outwith the scope of the request), should be disclosed to Mr Sanderson in un-redacted form.
- (ii) Some of the information in document 3 was correctly withheld under section 25(1) of FOISA. However, the remaining information was not correctly withheld under sections 25(1) or 30(c) of FOISA. The Commissioner requires this information to be disclosed to Mr Sanderson. To aid compliance with her decision, the Commissioner will provide the Ministers with a marked up copy of document 3.

## Decision

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The Commissioner finds that the Scottish Ministers partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Sanderson.

The Commissioner finds that:

- (i) the Ministers were correct to withhold some information from document 3 under section 25(1) of FOISA, as it was “otherwise accessible” to Mr Sanderson.
- (ii) the Ministers were incorrect to inform Mr Sanderson that other information in documents 1, 2, 3, 14 and 15 was otherwise accessible to him and exempt from disclosure under section 25(1) of FOISA.
- (iii) the Ministers failed to comply with the requirements of section 15 of FOISA (Duty to provide advice and assistance) in relation to the decision to withhold information under section 25(1) of FOISA without specifying what that information was.
- (iv) the Ministers wrongly withheld information under section 30(c) of FOISA.

The Commissioner requires the Ministers to disclose the information specified in the final paragraph of the decision, by **2 February 2017**.

## **Appeal**

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Should either Mr Sanderson or the Ministers wish to appeal against this decision, they have the right to 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.

## **Enforcement**

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If the Ministers fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Ministers as if they had committed a contempt of court.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**19 December 2016**

## Appendix 1: Relevant statutory provisions

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### 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 2, 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 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

#### 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 provisions 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).

#### 25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

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

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

**Scottish Information Commissioner**

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