

Decision Notice



Decision 245/2011 Mr David Rule and the Scottish Ministers

Correspondence with named individuals

Reference No: 201101773

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Summary

Mr Rule requested from the Scottish Ministers (the Ministers) all information held by the First Minister's Office contained in correspondence with any one of a list of 19 named people. The Ministers failed to respond and Mr Rule requested a review. Following the review, when the Ministers responded by stating that Mr Rule's requests were invalid, Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had failed to deal with Mr Rule's requests for information in accordance with Part 1 of FOISA, by incorrectly concluding that the requests did not fulfil the requirements of section 8(1) of FOISA. He was satisfied that the requests met those requirements and were therefore valid. Consequently, he required the Ministers to review their handling of Mr Rule's information requests, and notify him of the outcome of that review.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3), and (6) (General entitlement); 8(1) (Requesting information); 10(1)(a) (Time for compliance) and 21(1), (4), and (5) (Review by Scottish public authority)

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

1. On 29 May 2011, Mr Rule wrote to the Ministers requesting all information held by the First Minister's Office contained in correspondence with any one of the following people:
 - (a) Brian Cox
 - (b) Dan Macdonald
 - (c) John Robertson
 - (d) Sir David Murray



- (e) Gary McLean
 - (f) Iain Banks
 - (g) Lady Claire Macdonald
 - (h) Mark Millar
 - (i) Andrew Fairlie
 - (j) Alan Cumming
 - (k) Frankie Dettori
 - (l) Lari Don
 - (m) Jack Vettriano
 - (n) Brian Souter
 - (o) Jim McColl
 - (p) Tommy Brennan
 - (q) Sean Connery
 - (r) Sandy Adam
 - (s) Midge Ure.
2. On 29 June 2011, having received no response to his requests, Mr Rule wrote to the Ministers requesting a review of their failure to reach a decision on the request.
 3. Mr Rule did not receive a response to his requirement for review and, on 12 August 2011, wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



4. Following this application, on 16 September 2011 the Ministers notified Mr Rule of the outcome of their review. The Ministers referred to the Court of Session judgment in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73¹ which clarified, *inter alia*, that information requests must identify the information sought. The Ministers stated that a request was not valid if it did not, in accordance with section 8(1)(c) of FOISA, describe the information requested. They considered Mr Rule's requests to be "a general request for information held on a number of named individuals which does not clearly identify the particular information you are looking for", and consequently they were of the view that these were not valid requests in line with the Court of Session decision. The Ministers advised that they would be able to consider a revised request which clearly described the information Mr Rule was looking for.
5. On 23 September 2011, having withdrawn his earlier application, Mr Rule wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

Investigation

6. On 28 September 2011, the Ministers were notified in writing that an application had been received from Mr Rule and were invited to comment on the application, as required by section 49(3)(a) of FOISA. In particular, they were asked to comment on why they did not consider Mr Rule's requests to be valid for the purposes of FOISA.
7. The Ministers responded on 13 October 2011, and again on 29 November 2011, explaining why they regarded the requests as invalid. In the second submission, they made it clear that they were arguing only that the requests were invalid, rather than seeking to apply any other provisions of FOISA. Insofar as relevant, these submissions will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



9. The Ministers' submissions appear to be based on the premise that Mr Rule made a single request for information on 29 May 2011. Should he not be prepared to accept the Ministers' submissions on validity, however, the Commissioner is satisfied that it would be appropriate to treat Mr Rule's email of that date as containing 19 separate requests for information (i.e. one in respect of the named individuals): indeed, in the Commissioner's view it would be wholly artificial (and thus unreasonable) to do otherwise. If valid, each of these is quite capable of standing alone and is in no way dependent on any of the others.

Validity of the requests

10. Section 8(1) of FOISA sets down the basic requirements for a valid request for information in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested. The Ministers have not sought to argue that the requests failed to meet any of the other requirements contained in section 8(1), focusing entirely on those of section 8(1)(c) in their submissions: these, therefore, are the requirements the Commissioner will consider in what follows.
11. In their submissions to the Commissioner, the Ministers re-iterated their review finding: that, applying the *Glasgow City Council* decision and section 8(1)(c), they had concluded that Mr Rule's request was a general request for information held on a number of named individuals, which did not clearly identify the particular information he was looking for. It was not, therefore, a valid request. They also contended that Mr Rule's failure to specify any subject matter made it impossible to determine which individuals he was interested in.
12. Firstly, the Ministers submitted that the phrase "information contained in correspondence" was insufficient to qualify as a description of the information sought, providing no assistance in locating and retrieving information falling within the scope of the requests.
13. On the question of the individuals to whom the requests related, the Ministers noted (for example) that there were several people named "John Robertson" in the public eye in Scotland who might have corresponded with the First Minister, and many private individuals of that name who might also have written to the head of the Scottish Government on any number of issues. Additionally, the Ministers noted that the correspondence might have come from anywhere in the world. They Government provided the results of a cursory search on a popular business-related networking website (LinkedIn) for some of the names given by Mr Rule, which gave an indication of the number of possible persons to whom Mr Rule might have been referring.



14. The Commissioner has dealt with questions of interpreting section 8(1)(c) before (see, for example *Decision 096/2010 Mr Rami Okasha and the Scottish Ministers*²). These take into consideration the Commissioner's guidance on the validity of requests, produced in the light of the Court of Session decision in the *Glasgow City Council* case³. He has taken the view that the purpose of requiring a description of the information is to allow the public authority to identify and locate the information requested. While (as the Court of Session found) FOISA provides a right to information and not documents, a request which describes information by reference to a document will still be valid when it is reasonably clear from the request that the applicant is seeking the information recorded in that document.
15. In this case, Mr Rule requested all information contained in a specific type of document (correspondence). The Commissioner finds it reasonably clear that the applicant is seeking the information recorded in that type of document. The word "correspondence" provides specification about the type of communication. Clearly, it is not sufficient by itself to describe the information Mr Rule is looking for – the question is whether the remaining information in the requests achieves this.
16. In this connection, the Commissioner does not accept that a request must specify what information is sought by reference to the subject matter of that information. He is of the view that this is inconsistent with the plain words of section 8(1)(c). He also considers such an interpretation to be inconsistent with the overall aim of FOISA, which is to achieve openness with a minimum of formal requirements.
17. The Commissioner notes that Mr Rule lists a number of prominent persons. The Ministers acknowledged this in their submission of 29 November 2011, accepting that some were "obviously celebrities or business people". They went on to argue, however, that other names in the list were "exceedingly common and could refer to private individuals or officials in the Scottish Government with those names". They did not, therefore, believe that the names were sufficient to permit identification.
18. Taking a reasonable, "common sense" approach to the requests submitted by Mr Rule, it does appear appropriate to interpret them by reference to a common characteristic, i.e. that the individuals Mr Rule has in mind are persons who are, in some way or other, in the public eye. It does not appear reasonable to start from the premise that the applicant has constructed a basically random list of subjects, some of whom are public figures and some of whom are not.
19. In most cases, it also appears to the Commissioner that there is one individual named on Mr Rule's list who is considerably more prominent than others of the same name. He would consider it reasonable in those instances, therefore, to work on the premise that those are the individuals Mr Rule is interested in. He also acknowledges that there are examples from the list where the name in question could be that of more than one prominent person. It might have been appropriate in those cases for the Ministers to seek clarification of which particular individual Mr Rule was concerned about, but section 1(3) of FOISA provided the machinery for obtaining that clarification.

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200902059.asp>

³ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/CourtofSessionGuidance2010/Validrequests.asp>



20. The Commissioner has considered Mr Rule's request in the light of the Ministers' submissions, the Court of Session decision cited above and his own related guidance and decisions. He is satisfied that the description provided by Mr Rule was reasonably clear in the circumstances, seeking information comprising correspondence (i.e. letters, emails, faxes) to and/or from the named persons (whom he considers to be reasonably identifiable, subject to degree of clarification which could have been obtained) held by the First Minister's Office as at the date of the request.
21. In all the circumstances, therefore, the Commissioner cannot accept that the difficulty experienced by the Ministers was one of identification. He finds that it would have been reasonable for any applicant in Mr Rule's position to believe that they had described the information sought adequately, as required by section 8(1)(c) of FOISA. Consequently, he is satisfied that the requests (and therefore the subsequent application to the Commissioner) are valid.
22. The Ministers provided further submissions on the way in which information was held following receipt by the First Minister's Office. Having satisfied himself that Mr Rule's requests described the information he was seeking adequately for the purposes of section 8(1)(c) of FOISA, the Commissioner does not consider that these are relevant to the question of validity, as claimed by the Ministers. They appear, rather, to be concerns relating to the process of retrieving information validly described – and it is possible that they may be relevant to the application of other provisions in Part 1 of FOISA, in dealing with a valid request.
23. In light of his finding that Mr Rule's requests were all valid, therefore, the Commissioner requires the Ministers to review their handling of those requests and notify him of the outcome of that review.

Technical issues

24. The Ministers explained that Mr Rule's requests had been submitted to the First Minister's Office immediately following the exceptionally busy post-election period and were overlooked due to the Office's involvement in the formation of the government and the formal appointments process for new Ministers. At the time, the Ministers noted, the Office had also been dealing with what was described as an overwhelming volume of correspondence. The Ministers acknowledged that there would appear to have been a failure to use the corporate systems in place to log and register these requests, which in turn resulted in a failure to provide a response to Mr Rule within the required deadlines. The Ministers regretted and apologised for this oversight.
25. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
26. Given that the Ministers did not respond to Mr Rule's requests of 29 May 2011, the Commissioner finds that they failed to comply with section 10(1).

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27. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
28. The Commissioner finds that the Ministers failed to deal with Mr Rule's requirement for review within the 20 working days required by section 21(1) of FOISA.

DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Rule.

In the circumstances, the Commissioner has concluded that Mr Rule's requests to the Ministers adequately described the information he was seeking and, fulfilling all other requirements of section 8(1) of FOISA, were valid information requests for the purposes of section 1(1).

Accordingly, the Commissioner concludes that the Ministers were under an obligation to respond to Mr Rule's information requests, on the basis that they were valid requests for information.

Insofar as the Ministers did respond to Mr Rule, the Commissioner finds that they failed to do so within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the Ministers to conduct a review in relation to Mr Rule's requests in accordance with section 21(4), and to notify him of the outcome of that review in accordance with section 21(5), all on the basis that the requests were valid, by 1 February 2012.



Appeal

Should either Mr Rule or the Scottish Ministers wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
13 December 2011



Appendix

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.

...

- (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.

...

- (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.

...



10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...