



Scottish Information
Commissioner

**Decision 009/2005 - Mr Robert Stephen and the Scottish
Parliament**

*Request for information relating to why a public petition made to the Parliament
was inadmissible*

Applicant: Robert Stephen
Authority: The Scottish Parliament
Case No: 200500893
Issue Date: 12 July 2005

Kevin Dunion
Scottish Information Commissioner

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Decision 009/2005 - Mr Stephen and the Scottish Parliament.

Request for information relating to why a public petition made to the Parliament was inadmissible – information withheld under section 30 of the Freedom of Information (Scotland) Act 2002 – prejudice to effective conduct of public affairs – information subsequently released during investigation

Facts

Mr Stephen asked the Public Petitions Committee of the Scottish Parliament (the Parliament) for information as to why the public petition (PE 716) he had submitted was deemed to be inadmissible. The Parliament released the Official Report of its consideration of his petition and a copy of the minutes of the meeting during which his petition had been considered, but withheld the private briefing paper issued to the members of the Public Petitions Committee. However, the Parliament subsequently released the private briefing paper to Mr Stephen during the Commissioner's investigation.

Outcome

The Commissioner found that the Parliament had provided Mr Stephen with all of the information that it holds in relation to why his petition was deemed to be inadmissible. The Commissioner also found that the Parliament has acted in breach of Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in relation to manner in which it had dealt with the request from Mr Stephen. However, the Commissioner does not require any remedial steps to be taken by the Parliament.



Appeal

Should either the Parliament or Mr Stephen wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. On 15 October 2003, Mr Stephen submitted a petition to the Public Petitions Committee of the Parliament. The Committee met on 12 November 2003 to consider whether the petition was admissible. The Committee found the petition to be inadmissible and notified Mr Stephen of its decision by a letter dated 14 November 2003.
2. On 3 February 2005, Mr Stephen requested in writing from the Parliament a copy of the “inadmissibility documentation” in relation to his petition. In addition to his request for the inadmissibility documentation, Mr Stephen also stated that on 15 November 2003 he had requested the full minutes of the Committee meeting of 12 November 2003 which found his petition inadmissible, but that he had not been supplied with that information.
3. On 9 February 2005, the Parliament provided Mr Stephen with a copy of the relevant extract of the Official Report of the Committee’s consideration of his petition and a copy of the minutes of that meeting. This letter from the Parliament did not refer to the fact that the Parliament held additional information in relation to Mr Stephen’s request, i.e. a private briefing for the members of the Public Petitions Committee, or that it was being withheld. (This briefing was subsequently released to Mr Stephen during the investigation.) This response also failed to inform Mr Stephen of the procedures provided by the Parliament for dealing with complaints arising from its handling of requests for information, of his right to ask the Parliament to review its decision and his right to apply to the Scottish Information Commissioner for a decision.
4. Mr Stephen was not satisfied with the information supplied to him and on 12 February 2005 he again wrote to the Clerk to the Public Petitions Committee. In this letter Mr Stephen acknowledged that he had received the Official Report and the minutes of the Committee meeting and renewed his request for the “inadmissibility documentation”.



5. The Parliament treated this second request for information as a fresh information request and not as a request for a review and accordingly issued a refusal notice to Mr Stephen under section 16 of the Freedom of Information (Scotland) Act 2002 (FOISA) on 1 March 2005. The refusal notice identified the information requested by Mr Stephen as a “private briefing for public petitions committee members only”. The notice confirmed that the information was held by the Parliament, but stated that the information was exempt from disclosure under section 30 of FOISA, in that the release of the information would inhibit substantially the free and frank provision of advice and thereby undermine the effective operation of the Public Petitions Committee of the Parliament. Furthermore, it argued that the public interest in the Parliament receiving free and frank advice and being able to conduct its work in an effective way outweighed the public interest in disclosure of the briefing paper. The Refusal Notice included information on how to seek an internal review and on the right to appeal to the Scottish Information Commissioner.
6. On 5 March 2005, Mr Stephen applied to me for a decision against the refusal by the Parliament to release to him a copy of the “inadmissibility documentation”.

Investigation

7. Section 47 of FOISA requires applicants to have exhausted his right to a review by a public authority in terms of section 20(1) before they can appeal to me for a decision. Although the Parliament did not consider Mr Stephen’s letter of 12 February 2005 as a request for review and instead issued a refusal notice in terms of section 16 of FOISA (which would be the correct response for a public authority wishing to withhold information in response to an initial request for information), I accepted Mr Stephen’s application of 5 March 2005 to my office as a valid application for a decision in terms of section 47 of FOISA. Mr Stephen did not couch his letter of 12 February 2005 to the Parliament in terms of requesting a review, but instead renewed his request for the “inadmissibility documentation” and emphasized that this was his second request for this information. He also noted that he would appeal to me in the event that the Parliament decided not to release the information. This may have been due to the fact that in its decision notice of 9 February 2005 the Parliament failed to inform Mr Stephen of his right to review in terms of section 20 of FOISA.



8. Therefore, I consider that the Parliament should have treated Mr Stephen's letter of 12 February 2005 as a request for review and should have reviewed its decision in terms of section 21 of FOISA. Paragraph 64 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities ("the Section 60 Code") makes it clear to public authorities that where an applicant has not been made aware of his or her rights to a review but nevertheless questions, in writing, the decision of an authority, the authority should treat the query as a formal request for a review.
9. I conclude that Mr Stephen had fulfilled these requirements and therefore consider Mr Stephen's letter of 12 February 2005 to be a valid request for review. I attribute the Parliament's failure to inform Mr Stephen of his right to review by the authority to a procedural irregularity in the way the Parliament dealt with this particular application (see paragraph 3 above).
10. On 18 March 2005, the investigating officer notified the Parliament of the receipt and validity of Mr Stephen's application and, to assist her with the investigation, she requested the following information to be provided to my office by 7 April 2005:
 - a copy of the information withheld from Mr Stephen;
 - information on the internal guidance relied on by the Parliament in relation to this information request;
 - general information on the Parliament's process of conducting internal reviews;
 - detailed analysis of the application of section 30 of FOISA to this information request;
 - general information on the Public Petitions Committee's conduct of its business, including information on the process of determining admissibility of public petitions;
 - a copy of the information request which gave rise to the disclosure of the information on 9 February 2005 and
 - a copy of the information supplied to Mr Stephen on 9 February 2005.
11. On receipt of this letter, the Parliament reconsidered the application from Mr Stephen and decided to release to Mr Stephen a copy of the section of the private briefing paper relating to his petition. The Parliament sent this to Mr Stephen on 29 March 2005. At the same time it provided my office with a copy of the letter to Mr Stephen and the private briefing paper. The Parliament stated in this letter that it did not hold any other information relating to Mr Stephen's petition and that no documents which may be termed "inadmissibility documentation" actually exist.



12. On 14 April 2005, I asked Mr Stephen to confirm whether he was content with the information he had received and whether he wished to withdraw his application to me. Mr Stephen replied on 16 April 2005 stating that the information he had received from the Public Petitions Committee was inadequate and that he had written to the Presiding Officer George Reid for clarification. He added that we could “close the information request” depending on the response he receives from the Presiding Officer. My office has not received any further correspondence from Mr Stephen to date. The Clerk to the Public Petitions Committee has confirmed that the correspondence with the Presiding Officer is in connection with another petition and is unrelated to this investigation.
13. On 29 April 2005, in order to confirm that the Parliament did not hold any other information relating to this request, the investigating officer asked the Parliament to provide information about the process of considering public petitions and the steps it had taken to determine that no more relevant information exists.
14. On 19 May 2005, the Clerk to the Public Petitions Committee provided this information. Having examined the Clerk’s response, I am satisfied that Mr Stephen has received the information he requested on 3 February 2005, as follows:
 - a) the relevant extract of the Official Report of Parliament’s consideration of his petition;
 - b) a copy of the minutes of that meeting and
 - c) a copy of the private briefing paper.
15. I am of the view that the Public Petitions Committee holds no more information in relation to this request.



Decision

I am satisfied that the Parliament has provided Mr Stephen with all of the information that it holds in relation to why his petition was deemed to be inadmissible.

I find that the Parliament has acted in breach of Part 1 of FOISA by failing to issue a refusal notice in response to Mr Stephen's initial request in compliance with section 16 and 19 of FOISA.

I do not require the Parliament to take any remedial steps to comply with these provisions in terms of section 49(6)(b) of FOISA.

Kevin Dunion
Scottish Information Commissioner
July 2005