

**Decision 140/2007 Dr Steve Burgess and the  
Scottish Executive**

*Cost estimates of the Scottish Green Party's policies in their  
Scottish Parliament manifestos*

**Applicant: Dr Steve Burgess  
Authority: Scottish Executive  
Case No: 200601336  
Decision Date: 20 August 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 140/2007 Dr Steve Burgess and the Scottish Executive

***Cost estimates of the Scottish Green Party's policies in their 1999 and 2003 Scottish Parliament manifestos - section 30(b)(i) (effective conduct of public affairs) of the Freedom of Information (Scotland) Act 2002 (FOISA)***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1 (General Entitlement); section 2(1) (Effect of exemptions); section 25 (Information otherwise accessible) and section 30(b)(i) (Prejudice to effective conduct of public affairs).

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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Dr Burgess requested cost estimates of the Scottish Green Party's policies in their 1999 and 2003 Scottish Parliament manifestos from the Scottish Executive (the Executive). The Executive responded by stating that the information was exempt under section 30(b)(ii) of FOISA. The Executive upheld this initial decision following an internal review of the handling of Dr Burgess' request. Dr Burgess remained dissatisfied and applied to the Commissioner for a decision. In the course of the investigation, the Executive indicated that a number of other exemptions applied to the information requested by Dr Burgess.

Following an investigation, the Commissioner found that the Executive had dealt with Dr Burgess's request for information in accordance with Part 1 of FOISA. He did not require the Executive to take any action.



## Background

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1. On 19 April 2006, Dr Burgess wrote to the Executive requesting the following information: the cost estimates of the Scottish Green Party's policies in their 1999 and 2003 Scottish Parliament manifestos, as both a total costing and broken down into the cost per policy item.
2. On 3 May 2006, the Executive wrote to Dr Burgess in response to his request for information. It issued a refusal notice stating that the information was exempt from disclosure under the terms of section 30(b)(ii) of FOISA.
3. On 10 May 2006, Dr Burgess wrote to the Executive requesting a review of its decision.
4. On 12 June 2006, the Executive wrote to notify Dr Burgess of the outcome of its review. The Executive advised that there was no consolidated information held by the Executive on the 1999 Scottish Parliament manifesto commitments of the Scottish Green Party. The review explained that there was information held by the Executive on the 2003 Scottish Parliament manifesto commitments of the Scottish Green Party. The Executive upheld its original decision that this information was exempt from disclosure under section 30(b)(ii) of FOISA.
5. On 11 August 2006, Dr Burgess wrote to my Office, stating that he was dissatisfied with the outcome of the Executive's review and applying to me for a decision in terms of section 47(1) of FOISA. Dr Burgess was dissatisfied because the Executive had upheld its decision to withhold the information, and with the public interest arguments applied by the Executive.
6. The application was validated by establishing that Dr Burgess had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



## The Investigation

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7. On 1 September 2006, the Executive was notified in writing that an application had been received from Dr Burgess and was asked to provide my Office with specified items of information required for the purposes of the investigation. The Executive responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Executive, asking it to provide comments on the application and to respond to specific questions on the application.

## Submissions from the Executive

9. In its submissions on this case, the Executive provided all information that it held regarding cost estimates for the Green Party's 2003 Scottish Parliament manifesto. The Executive explained that cost estimates were found within its Manifesto BriX Notes; internal briefings which were prepared to enable officials to consider the implications of the manifesto commitments of the various political parties in the run up to the 2003 elections.
10. The Executive confirmed that information of this type was not held in relation to the Green Party's 1999 Scottish Parliament manifesto, and so no information could be supplied in relation to the part of Dr Burgess' request that related to 1999 manifesto commitments.
11. The Executive supplied copies of 23 BriX Manifesto Notes concerning policy commitments that were included within the Green Party's 2003 manifesto, and two spread sheets which had been extracted from the Manifesto BriX Notes.
12. The Executive noted that the financial information contained in the Manifesto BriX notes is variable. In several of the documents the costs of the relevant policy are unquantified, in others costs are provided as broad estimates based on assumptions or costs of existing activities.



13. In respect of all the withheld material, the Executive provided submissions in respect of sections 25, 30(b)(i) and (ii) and 30(c) of FOISA similar to those it had offered in respect of my Decision 209/2006 - *Mr David Hutchison and the Scottish Executive*, and which are reported in paragraphs 11 – 16 of that decision notice. Decision 209/2006 considered a request for all of the Manifesto BriX notes prepared in advance for the 2003 Scottish Parliament elections. The Executive explained that it did not think that information which dealt with “financial implications” of the Scottish Green Party’s policies could be extracted from the wider content of the BriX notes and provided to Dr Burgess.

### **Submissions from Dr Burgess**

14. During the investigation, the investigating officer drew Dr Burgess’ attention to decision 209/2006. In that decision I held that the Executive had correctly applied the exemption in section 30(b)(i) of FOISA to the majority of the material and that it was also not in the public interest to disclose the material. However, I held that the Executive was not justified in withholding all the information, and ordered release of information specifying the titles of the individual notes, the author, etc (the disclosure required is stated in paragraph 60 of that decision).
15. It was explained to Dr Burgess that the information withheld from him was from, or extracted from, the BriX Manifesto Notes and that the submissions cited by the Executive in his application were similar to those cited, and upheld, in Decision 209/2007. The investigating officer indicated to Dr Burgess that, given the terms of decision 209/2006, it was unlikely that I would require the disclosure of the information he had requested in this case.
16. In response, Dr Burgess questioned how costings (as figures) could be said to amount to advice or fall within the terms of section 30(b)(i) of FOISA.

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

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17. Dr Burgess’ request sought information relating to cost estimates in relation to the Scottish Green Party’s policies in their 1999 and 2003 Scottish Parliament Manifestos.
  18. I accept the Executive’s submission that it does not hold any information which falls within the first part of Dr Burgess’s request relating to the 1999 manifesto commitments.
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19. However, the Executive has confirmed that information is held within its Manifesto BriX notes that provide details of cost estimates associated with 2003 Scottish Parliamentary election manifesto commitments of the Scottish Green Party.
20. Only part of these Manifesto BriX notes falls within the terms of the request by Dr Burgess; that is the section within each of the notes that deals with financial implications of the policy concerned. One of the spreadsheets provided to my office (item 24) also falls within the terms of Dr Burgess' request, providing a summary of cost estimates for various Scottish Green Party manifesto commitments. I accept the Executive's submission that the second spreadsheet provided (item 25) does not fall within the terms of Dr Burgess' request. This document does refer to manifesto policies of the Scottish Green Party but it does not provide details of any cost estimates.
21. Dr Burgess submitted to my office that he "had specifically requested costings (i.e. figures) rather than civil service advice to Ministers on manifesto proposals" and consequently section 30(b)(i) was not applicable.
22. However, I am satisfied that any figures within the Manifesto BriX notes which relate to estimated cost or financial implications of policies are inseparable from the advice offered, and the context in which any cost estimate is mentioned in the relevant briefing note would still be interpreted as advice from the relevant officials for the purposes of section 30(b)(i) of FOISA. I have noted that the cost estimates within the Manifesto BriX Notes are just that, based in many cases on assumptions and hypotheses about how the policy concerned might be taken forward by a future administration. In this context, I do consider this type of costing to be a form of advice.
23. Having considered the withheld information, along with the submissions made by both the Executive and Dr Burgess in this case, I accept that the information withheld falls within the terms of the exemption section 30(b)(i) of FOISA. My reasoning when reaching this judgement follows that set out in detail in my decision 209/2006, within paragraphs 28-41, and in particular paragraphs 31, 32, and 37 of that decision. I would refer both Dr Burgess and the Executive to that reasoning.
24. As I have determined that the information within the scope of Dr Burgess's request falls within the scope of the exemption contained in section 30(b)(i) of FOISA, I am required to consider the application of the public interest test in respect of that information.



## Consideration of the public interest test

25. Having decided that section 30(b)(i) applies to part of the withheld information, I shall now consider the public interest in respect of that information. The exemption in section 30(b)(i) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA.
26. The Executive argued for the need for a private arena for officials for preparation and consideration and that loss of this space would harm the quality of government by inhibiting officials from rigorous and frank debate. The essence of this argument is that the quality of governance is affected by the degree to which officials can create and use certain types of information. Essentially, the balancing of the public interest is efficacy of governance in a transition phase with transparency and accountability in respect of an aspect of governance.
27. Dr Burgess was dissatisfied with the reasoning of the Executive in respect of the balancing of the public interest.
28. In balancing the public interest, I have considered the same factors as I did paragraphs 42- 53, and in particular in paragraphs 44- 45, of Decision 209/2006. In that case I concluded "Apart from the general interest in seeing views expressed on matters of public debate it is not clear to me why it is in the public interest for these views to be made available to the extent that the harm caused by disclosure would be warranted. The senior officials are not using their assessment to influence outcomes: their views are not given expression (in fact quite the opposite – great care is taken to insulate those views from circulation even amongst colleagues.) For all of those proposals which do not subsequently form part of the programme of government the issues raised in the Notes are not taken any further."
29. In all the circumstances of this case I have come to a similar conclusion that the public interest in disclosing the information is outweighed by that in maintaining the exemption. I would refer both Dr Burgess and the Executive to paragraphs 46- 52 of Decision 209/2006 for the details of my reasoning.

## Other exemptions

30. Having accepted that the withheld information falls within section 30(b)(i) of FOISA, I do not intend to consider in detail the other exemptions cited by the Executive in this case. In respect of these exemptions I would refer to my reasoning in Decision Notice 209/2007 in paragraphs 24 -27 in respect of section 25, paragraphs 28-41 in respect of section 30(b)(ii), and in paragraphs 54-59 in respect of section 30(c).



## **Decision**

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I find that the Scottish Executive acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Burgess.

## **Appeal**

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Should either Dr Burgess or the Executive 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**  
**20 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 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.

##### 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

...