

# Decision Notice



Decision 068/2009 Mr Mike Wade and Scottish Screen

Information relating to the forthcoming closure of Scottish Screen and the setting-up of Creative Scotland

Reference No: 200801710  
Decision Date: 15 June 2009

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Wade requested from Scottish Screen information relating to the forthcoming closure of Scottish Screen along with information relating to the setting-up of Creative Scotland. Scottish Screen responded by providing certain of the information requested, but stating that it did not hold any other information relevant to Mr Wade's request. Following a review, Mr Wade remained dissatisfied with Scottish Screen's responses and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Scottish Screen partially complied with Mr Wade's request for information in accordance with Part 1 of FOISA, by providing all the information it held falling within the scope of the request. However the Commissioner also found that Scottish Screen had failed to comply with Part 1 of FOISA by failing to comply fully with section 16 in its refusal notice. The Commissioner did not require Scottish Screen to take any action on this occasion.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 16(1)(c) and (d) (Refusal of request); 17(1) (Notice that information is not held).

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

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1. On 23 June 2008, Mr Wade wrote to Scottish Screen as follows:

*"I would be grateful if you could supply correspondence, minutes and internal memoranda which detail estimated costs for the forthcoming closure of Scottish Screen, and any information concerning likely redundancies, which are likely to result from its amalgamation with Scottish Art Council in the new body, Creative Scotland. I would also like to receive any published records relating to start-up costs at the new Creative Scotland"*



2. After requesting an extension, which Mr Wade agreed to, Scottish Screen responded on 1 August 2008. In its response, Scottish Screen provided information relating to the transition costs of setting up Creative Scotland. This document was subjected to partial redaction on the basis that disclosure of the redacted information could be prejudicial to members of staff of the two organisations party to the correspondence in question. Scottish Screen stated that it did not hold any further information falling within the scope of Mr Wade's request.
3. On 12 August 2008, Mr Wade wrote to Scottish Screen requesting a review of its decision. In particular, Mr Wade questioned Scottish Screen's assertion that it did not hold any more information relating to the costs concerning the closure of Scottish Screen and the establishment of Creative Scotland.
4. Scottish Screen notified Mr Wade of the outcome of its review on 10 September 2008. Scottish Screen upheld its original decision, confirming that apart from the partially redacted document already provided to Mr Wade it held no information falling within the scope of his request.
5. On 24 November 2008 Mr Wade wrote to the Commissioner's Office, stating that he was dissatisfied with the outcome of Scottish Screen's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Wade had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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7. On 27 November 2008, Scottish Screen was notified in writing that an application had been received from Mr Wade. The case was then allocated to an investigating officer.
8. The investigating officer contacted Scottish Screen on 13 January 2009, confirming that Mr Wade's application was valid for the purposes of section 47 of FOISA and giving it an opportunity to provide comments on the application as required by section 49(3)(a) of FOISA. Scottish Screen was also asked to respond to specific questions. In particular, it was asked to provide details of the searches and search methodology used to identify what information it held in relation to Mr Wade's request for information.
9. Scottish Screen responded on 2 February 2009, following which the investigating officer clarified aspects of this submission with Scottish Screen. Scottish Screen's submissions will be discussed in the Commissioner's analysis and findings section below.



10. During the investigation, the investigating officer noted that the document provided to Mr Wade by Scottish Screen appeared at the time of Mr Wade's request to have been already in the public domain in its entirety. Scottish Screen confirmed that it had failed to note this at the time of Mr Wade's request. With a view to addressing this error in its handling of Mr Wade's request, Scottish Screen agreed to make the full unredacted document available to Mr Wade, apologising for its earlier failure when it did so. Consequently, because the full document was provided to Mr Wade during the course of the investigation, the Commissioner's decision primarily focuses on whether Scottish Screen provided Mr Wade with all the information it held relevant to his request.

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

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11. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Mr Wade and Scottish Screen and he is satisfied that no matter of relevance has been overlooked.
12. Although technical issues will be addressed later in this Decision, the Commissioner considers his primary role in carrying out this investigation to be the consideration of whether Scottish Screen held any information falling within the scope of Mr Wade's request, in addition to that released to him already. The Commissioner cannot comment on whether a public authority should have recorded any or more information about a particular event or process, only on whether it actually held such information on receipt of the applicant's request. Consequently, in this instance, he cannot comment on whether Scottish Screen ought to hold further recorded information about a process it was party to, only on whether he is satisfied it did in fact hold only what it claimed to.
13. In its submissions to the Commissioner, Scottish Screen stated that in dealing with Mr Wade's request for information it had identified one document relevant to his request and that no other information was held.

#### **Consideration of section 17 (Notice that information is not held)**

14. Section 17(1) of FOISA requires that where an authority receives a request for recorded information that it does not hold, it must give the applicant notice in writing to that effect.
15. In order to determine whether Scottish Screen dealt with Mr Wade's request correctly, the Commissioner must establish whether, at the time it received Mr Wade's request, Scottish Screen held any information which would fall within the scope of that request, in addition to that identified and provided at that time.
16. With this in mind, the investigating officer asked Scottish Screen for details of the steps it had taken to establish what information it held in relation to the request, considering both manual and electronic searches and providing an explanation of the search methodologies used.



*Has all relevant information been supplied to Mr Wade?*

17. In considering Mr Wade's request, Scottish Screen confirmed that it had broken it down into the following three categories:
  - i. correspondence, minutes and internal memoranda which detail estimated costs for the forthcoming closure of Scottish Screen
  - ii. Any information concerning likely redundancies
  - iii. Published records relating to start-up costs at the new Creative Scotland.
18. Scottish Screen confirmed that in considering possible sources of information relevant to Mr Wade's request, it had considered both manual and electronic records.
19. Scottish Screen confirmed that the searches involved discussions with relevant senior members of its own staff, and also consultation with relevant staff at the Scottish Government, and the Scottish Arts Council and with the Creative Scotland Transition Director. Following assessment and consideration of all potential sources it had identified, it concluded that it held no relevant information in addition to that which had been provided to Mr Wade. It confirmed that it had revisited its assessment and consideration of potential sources in response to the Commissioner's investigation.
20. With a view to demonstrating why it only held limited information falling within the scope of Mr Wade's request, Scottish Screen explained that although at the time of the request many discussions had inevitably taken place regarding the establishment of Creative Scotland, no work had been discussed or commissioned on the possible costs of closing Scottish Screen or indeed on a possible organisation structure for Creative Scotland. On the latter question, the only relevant information available at the time of the request had been that contained within the policy memorandum of the Creative Scotland Bill. It advised that at that time there had been no consideration of any likely redundancies.
21. Scottish Screen added that as the parliamentary debate and subsequent events had borne out, at the time of Mr Wade's request there was a lack of definitive information about Creative Scotland, its remit, structure and budget, and the potential implications these would have for existing bodies. It pointed out that the only published record relating to the start-up costs had been provided to Mr Wade, albeit initially partially redacted in error.
22. Having considered Scottish Screen's submissions detailing the searches and supporting work it undertook in response to Mr Wade's request, its explanation of its involvement in the matter at the time of Mr Wade's request and his general understanding of the development of Creative Scotland, the Commissioner is satisfied that apart from the document already provided to Mr Wade, no information falling within the scope of his request was held by Scottish Screen at the time that request was received. The Commissioner has concluded that Scottish Screen took all reasonable steps to identify what relevant information it held and was correct to inform Mr Wade that it held no further information pertinent to his request.



### Technical breaches of FOISA – sections 16

23. Although not raised directly as an issue by Mr Wade in his application, the Commissioner notes that where a Scottish public authority refuses to disclose information on the basis of one of the exemptions in Part 2 of FOISA, section 16(1)(c) of FOISA requires the public authority to specify the exemption in question. Further 16(1)(d) of FOISA requires the public authority to state (if not otherwise apparent) why the exemption applies.
24. Scottish Screen failed to specify in its initial response which exemption it was relying on to withhold the information redacted from the document it provided to Mr Wade, providing Mr Wade with only a very brief explanation for its decision to withhold the redacted information, suggesting that disclosure could be prejudicial to certain members of staff. Without further clarification, it is difficult to connect this statement to a particular exemption in Part 2.
25. Further to this, Scottish Screen made no attempt to clarify the basis on which information was being withheld when responding to Mr Wade's request for review.
26. The Commissioner notes that during the course of the investigation the information initially withheld from Mr Wade was made available to him, although it should be noted that it was publicly available at the time of the request anyway. However, it is important that Scottish public authorities comply with the requirements of section 16 of FOISA when responding to information requests, so that applicants understand the basis on which information is being withheld from them. In the circumstances, given the subsequent release of the information, the Commissioner does not require any action on this point in response to Mr Wade's application.

### DECISION

The Commissioner finds that Scottish Screen partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Wade, by providing all the information it held which fell within the scope of Mr Wade's request.

However, the Commissioner also finds that Scottish Screen failed to comply fully with section 16(1) of FOISA in responding to Mr Wade's information request and in doing so failed to comply with Part 1 of FOISA. Given that the information initially withheld from Mr Wade was subsequently released to him, the Commissioner does not require Scottish Screen to take any action in relation to this failure in response to this particular application.



## Appeal

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Should either Mr Wade or Scottish Screen 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**15 June 2009**



## 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.

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##### 16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-

...

- (c) specifies the exemption in question; and
- (d) states (if not otherwise apparent) why the exemption applies.

##### 17 Notice that information is not held

- (1) Where-
  - (a) a Scottish public authority receives a request which would require it either-
    - (i) to comply with section 1(1); or
    - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.



Decision 068/2009  
Mr Mike Wade  
and Scottish Screen

