

Decision Notice



Decision 131/2011 David Rule and the Scottish Ministers

Validity of request

Reference No: 201101003
Decision Date: 05 July 2011

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Scottish Information Commissioner

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Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA), specifically those in respect of the validity of the request, in dealing with an information request made by Mr Rule.

Background

1. On 28 March 2011, Mr Rule wrote to the Ministers requesting the following:
“... all the information contained in the email sent by Robin Naysmith on 17 February 2009 at 15:37 to Lisa Stark, Carolyn Walser and Stuart McLean entitled ‘RE: FOR THE URGENT ATTENTION OF SENATOR WEBB’.”
2. The Ministers responded on 26 April 2011. They advised that they considered his request to be invalid.
3. On 26 April 2011, Mr Rule wrote to the Ministers requesting a review of their decision, maintaining that his request was valid in terms of section 8 of FOISA.
4. The Ministers notified Mr Rule of the outcome of their review on 26 May 2011, confirming that their original decision should be confirmed without modification. In their view, the request did not reasonably describe the information Mr Rule was looking for.
5. On 31 May 2011 Mr Rule wrote to the Commissioner, 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 7 June 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 considered the request did not adequately describe the information sought by Mr Rule (and specifically why they were unable to identify and locate that information from the description he had given).



7. Responding on 29 June 2011, the Ministers advised that any conclusion that Mr Rule's current request was valid would appear to be contrary to the view previously taken by the Commissioner in relation to a specified earlier application by Mr Rule. They submitted that, as in that previous case, he had requested a full version of a specific document he already had in his possession with some sections redacted as being outwith the scope of the request under which it was provided.
8. The earlier application had been found to be invalid by the Commissioner and the Ministers considered the meaning and intent of the current request to be the same, in that Mr Rule was merely seeking to "complete" the document he had already received, regardless of the content of the information withheld. They acknowledged that if the request under consideration had come from another member of the public it was unlikely that it would have been treated as invalid, as it specified a particular document. However, "given the Commissioner's previous decision that seeking to complete a document was not a valid request for information with regard to this document and Mr Rule", the Ministers considered that it would be appropriate to respond to Mr Rule by informing him that his request was invalid.

Commissioner's analysis and findings

9. The Commissioner has considered the Ministers' submissions in this case fully. He has also considered the terms of Mr Rule's request, along with the terms of the earlier request referred to in the Ministers' submissions, in the light of the requirements of section 8 of FOISA.
10. The previous request referred to by the Ministers sought, in their entirety and with no further specification, all documents redacted on the basis that information within them fell outwith the scope of another request Mr Rule had submitted. In that case, having considered the terms of the relevant request in the light of his own guidance on the validity of requests¹, the Commissioner determined that it was not reasonably clear from the request what information the applicant was seeking. Given the limited reference points in the request, he considered it to be more appropriately characterised as seeking documents, or parts of documents, rather than the information in them.
11. In this case, however, Mr Rule has requested all of the information contained in one specific document, identifying it in some detail, albeit not by reference to any subject matter. No reference is made to previously redacted material. In the circumstances, while the Ministers may believe the distinction to be a fine one, the Commissioner finds this to be a case where it is reasonably clear (as envisaged in paragraphs 3.1 onwards of the guidance on validity referred to above) that the applicant is seeking the information recorded in the specified document. In this regard, he notes in particular that the Ministers would appear to have no difficulty locating and retrieving the information in that document from the details provided by Mr Rule in his current request.

¹ <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



12. The Commissioner also notes that the Ministers would have been unlikely to treat this request as invalid if it had come from another member of the public, their reasons for this position being set out in greater detail in paragraph 8 above. He does not, however, consider the identity of, or the authority's previous dealings with, the applicant to be of any relevance to the determination of whether a valid request for information has been made in a particular case (whatever relevance they may have to the application of any other provisions of FOISA). The only question to be considered here is whether the request met the requirements of section 8 of FOISA, which are set out in the Appendix below, taking account of the guidance on validity referred to above. Here, for all the reasons given above, the Commissioner is satisfied that the request which formed the subject of Mr Rule's current application described the information requested, as required by section 8(1)(c) of FOISA: no suggestion has been made that the request failed to meet any of the other requirements of section 8, and consequently the Commissioner does not find it necessary to consider these other requirements in this case.
13. In all the circumstances of this case, therefore, the Commissioner is satisfied that Mr Rule made a valid request for information under section 1(1) of FOISA and therefore requires the Ministers to deal with it accordingly.
14. Finally, the Commissioner would find it helpful to record at this point that the determination described in paragraph 10 above was one made on the terms of a particular request. It was not intended to create a general rule with regard to "seeking to complete" documents, either with respect to this particular applicant or requests more widely. Whether a request is valid will depend on whether certain statutory requirements are met in any given case and this is not an area in which the Commissioner considers it appropriate (or, for that matter, possible) to create rules of general application to requests falling within a particular category (including, it goes without saying, requests from a particular applicant).

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 dealing with the request made by Mr Rule, in particular by refusing to deal with it as a valid request for information, meeting all of the requirements of section 8 of FOISA.

The Commissioner therefore requires the Ministers to respond to Mr Rule's request as a valid request for information under section 1(1) of FOISA, by 22 August 2011.



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.

Kevin Dunion
Scottish Information Commissioner
05 July 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.

...

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.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph), a request is to be treated as made in writing where the text of the request is-
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.