

# Decision Notice



Decision 049/2012 Mr Rule and the Scottish Ministers

Communications with Donald Trump and the Trump Organization

Reference No: 201102393  
Decision Date: 15 March 2012

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**Margaret Keyse**

Acting Scottish Information Commissioner

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## Summary

Mr Rule requested from the Scottish Ministers (the Ministers) information contained in communication between the First Minister and his office and Donald Trump and the Trump Organization. The Ministers did not respond and Mr Rule wrote to them requiring the Ministers to conduct a review. The Ministers conducted a review and responded by stating that the request was not valid as it did not, in accordance with section 8(1)(c) of FOISA, describe the information requested. Following a review, 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 request for information in accordance with Part 1 of FOISA, by incorrectly concluding that the request did not fulfill the requirements of section 8(1) of FOISA. She was satisfied that the request met those requirements and was therefore valid. Consequently, she required the Ministers to review their handling of Mr Rule's information request, and notify him of the outcome of that review.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1) (Requesting information)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

## Background

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1. On 11 October 2011, Mr Rule wrote to the Ministers requesting information contained in communication between the First Minister and his office and Donald Trump and the Trump Organization.
2. On 11 November 2011, having received no response to his request, Mr Rule wrote to the Ministers requesting a review on the basis that they had failed to respond to his request.



3. The Ministers notified Mr Rule of the outcome of their review on 21 December 2011. They apologised that the request was not properly allocated for action and not dealt with in time.
4. The Ministers also advised Mr Rule that FOISA gives the right to information, not documents, and that information requests must identify the information sought. They advised Mr Rule that a request is not valid if it does not, in accordance with section 8(1)(c) of FOISA, describe the information requested. The Ministers stated that, as Mr Rule's request was a general request for all information contained in communication which does not reasonably clearly identify the particular information Mr Rule was looking for, they did not consider it to be a valid request for information.
5. In deeming the requests invalid, 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 73<sup>1</sup> (the *Glasgow City Council* decision).
6. The Ministers invited Mr Rule to rephrase his request, for example by specifying the subject matter(s) of the correspondence.
7. On 22 December 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.
8. On 10 January 2012, the Ministers were notified in writing that an application had been received from Mr Rule. The Ministers were notified that, given that Mr Rule's application appeared to be otherwise valid, the Commissioner would need to consider whether Mr Rule's request was valid in terms of section 8(1) of FOISA, before determining whether an investigation could be taken forward.
9. The Ministers were invited to provide submissions on the application (as required by section 49(3)(a) of FOISA) to inform the Commissioner's consideration of whether Mr Rule's request was valid for the purposes of FOISA.

## Investigation

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10. The Ministers responded on 1 February 2012 and the case was allocated to an investigating officer.

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



## Commissioner's analysis and findings

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

### Validity of the requests

12. 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.
13. Mr Rule’s application to the Commissioner explained that his request was made using guidance published by the Commissioner following the Court of Session’s decision in the *Glasgow City Council* decision<sup>2</sup>.
14. Mr Rule also highlighted that his request followed the same template as one of his previous requests which the Commissioner deemed to valid in *Decision 245/2011 Mr Rule and the Scottish Ministers*<sup>3</sup>. In that case, Mr Rule had asked the Ministers for information held by the First Minister’s Office contained in correspondence with a number of named individuals. Mr Rule argued that the Ministers appear not to have followed general advice or the outcome of previous cases.
15. Within the Ministers’ submissions of 1 February 2012, it was made clear that the Ministers were arguing only that the request was invalid, rather than seeking to apply any other provision of FOISA.
16. In their submissions to the Commissioner, the Ministers re-iterated their review finding: that the request, in not specifying a subject matter or topic of discussion, was not a valid request for information. It did not describe the information requested and therefore did not meet the requirements of section 8(1)(c), as interpreted in the *Glasgow City Council* decision.
17. The Ministers stated the “all information contained in communication” is not an adequate description of the information being sought as it provides no assistance in locating and retrieving information within the scope of the request, nor does it offer any specific time period or topic to provide any focus on where the information might be held or what information Mr Rule might be interested in.

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<sup>2</sup> <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>

<sup>3</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2011/201101773.asp>



18. The Ministers argued that the provision of context or a specified time period would have made identification of relevant information simpler and they could have considered the request valid. They stated that this was of particular importance with regard to Donald Trump and the Trump Organization, as there have been a range of subjects and issues which have been high profile and have generated a significant amount of correspondence and creation of information. The Ministers advised that the issue of development on the Menie Estate is just one of many issues on which there has been correspondence, and with regard to which a considerable amount of information has already been released into the public domain.
19. The Minister suggested that a small amount of research on the Scottish Government website would provide Mr Rule with an insight into the types of correspondence and topics that there has been between the Scottish Government and Mr Trump and they therefore considered that Mr Rule should be able to narrow the focus of his request.
20. The Ministers highlighted that, in previous requests, Mr Rule has specified that he is only interested in information held by the First Minister's Office, but in this case he has sought "all information contained in communication between the First Minister's and his Office and Donald Trump and the Trump Organization" which the Ministers state would cover information held by the whole of the Scottish Government with no specific topic to assist identification.
21. The Ministers said that if they considered the request to be valid, in order to identify information falling within the scope of Mr Rule's request, they would need to trawl the electronic Records and Document Management system, and they have no way of ensuring that a definitive search could be undertaken for information that might be correspondence between any of these parties without first being able to identify if it is in relation to a particular subject.
22. They explained that they do not store information by name of the person sending it, receiving it, or by the names of people that might be involved in a particular issue and that, in this case, the number of documents identified by key word searches would be enormous. All documents 'mentioning' either the First Minister or Donald Trump or anyone working in the First Minister's Office or for the Trump Organization would have to be identified, opened, read and checked to see if there were correspondence to or from the First Minister. Furthermore, according to the Ministers, they would have to identify all persons who have worked in the First Minister's Office since devolution, as they would fall within the scope of Mr Rule's request. The Ministers also argued that they would also have to ascertain names of people who worked for the Trump Organization, so that they could identify if they had sent or received correspondence from or to the First Minister or his office. Therefore, the Ministers considered that the request was invalid, and that it would not be appropriate to try to apply provisions such as section 12 of FOISA (Excessive cost of compliance) when there are so many variables that they could not account for due to the potential scope of the request.
23. The Commissioner will now consider whether Mr Rule's request complied with section 8(1)(c) of FOISA.



24. 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*<sup>4</sup>). 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* case. 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.
25. In this case, Mr Rule requested all information contained in "communications". The Commissioner, taking account that the remit of FOISA is limited to information "recorded in any form"<sup>5</sup>, finds it reasonably clear that Mr Rule is seeking the information recorded in a document, which records an exchange of information between two parties. The word "communication" provides specification about the nature of information sought. 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 request achieves this.
26. 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. She is of the view that this is inconsistent with the plain words of section 8(1)(c). She 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.
27. The Commissioner has noted the Ministers' argument that Mr Rule's failure to specify a subject matter, timeframe or topic as a key factor in the argument that the request lacked specification. The Commissioner has made it clear in previous decisions (and has reiterated above) that this is not a prerequisite of a valid description.
28. Mr Rule has, however, provided the Ministers with specific parameters to his request, i.e. the origin and recipient of the data, namely between the First Minister and his office and Donald Trump and the Trump Organization. The Commissioner accepts, as argued by the Ministers, that it is likely that this will capture a wealth of data covering a range of issues, but this does not in itself render Mr Rule's request invalid.
29. In this case, for the reasons set out above, the Commissioner considers Mr Rule's description of the requested information to have been sufficiently clear to enable its identification.
30. The Commissioner is therefore satisfied that the description provided in Mr Rule's request fulfilled the requirements of section 8(1)(c) of FOISA. Consequently, she is satisfied that the request was valid for the purposes of section 1(1) of FOISA (and the Ministers were therefore obliged to respond to it in terms of Part 1 of FOISA).

<sup>4</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200902059.asp>

<sup>5</sup> Section 73 of FOISA (Interpretation)



31. In light of her finding that Mr Rule's request was valid, the Commissioner requires the Ministers to review their handling of those requests and notify Mr Rule of the outcome of that review.

## 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 request made by Mr Rule.

In the circumstances, the Commissioner has concluded that Mr Rule's request 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 request, on the basis that it was a valid request for information.

The Commissioner therefore requires the Ministers to conduct a review in relation to Mr Rule's request 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 30 April 2012

## Appeal

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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**  
**Acting Scottish Information Commissioner**  
**15 March 2012**



## 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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##### 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.

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