

Decision Notice



Decision 271/2013 Mr Paul Hutcheon and the Scottish Ministers

Accommodation costs: First Minister

Reference No: 201301679

Decision Date: 3 December 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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Summary

On 28 March 2013, Mr Hutcheon asked the Scottish Ministers (the Ministers) for details of accommodation costs relating to the First Minister. The Ministers provided some information following a review, stating they held no further information. Following an investigation, the Commissioner accepted that no further information was held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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

1. On 28 March 2013, Mr Hutcheon wrote to the Ministers requesting the following information:
 - a) In relation to the First Minister's five night stay in Culloden House, spanning 10, 11, 12, 13 and 14 July 2012, the total cost of the accommodation and the actual bills/invoices;
 - b) In relation to the above, did Moira Salmond also stay at Culloden House on these dates? If so, what was the total accommodation cost?
 - c) From 1 January 2010 to the present day, all occasions when the Scottish Government has paid the accommodation costs (in Scotland) of Moira Salmond, in each case stating the date, the name of the venue/hotel, and the cost.
2. Having received no response, on 14 May 2013 Mr Hutcheon wrote to the Ministers requesting a review.



3. Following an application to the Commissioner and *Decision 142/2013*¹, the Ministers notified Mr Hutcheon of the outcome of their review on 16 July 2013. They apologised for the time taken to respond. In response to request a), the Ministers provided information from the invoice. For request b), the Ministers responded that Mrs Salmond accompanied the First Minister on this occasion, the accommodation cost being as given in response to request a). In response to request c), the Ministers explained that Mrs Salmond accompanied the First Minister throughout the year, but that (as shown in their response to request b)) the accommodation costs were not altered by this. They also explained that they routinely publish information on Ministerial engagements and journeys, providing a link to this information on their website². The Minister stated that they held no further relevant information.
4. On 22 July 2013, Mr Hutcheon wrote to the Commissioner's office, 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.
5. The application was validated by establishing that Mr Hutcheon made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that those requests. The case was then allocated to an investigating officer.

Investigation

6. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). They were asked specific questions relating to the information they held. The Ministers provided submissions in response.

Commissioner's analysis and findings

7. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Hutcheon and the Ministers. She is satisfied that no matter of relevance has been overlooked.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201301478.aspx>

² <http://www.scotland.gov.uk/About/People/14944>



8. Section 1(1) of FOISA creates a general entitlement to information held by a Scottish public authority (i.e. in terms of section 1(4), information held at the time the request is received), subject to various qualifications set out in the rest of Part 1. The Ministers did not claim any of these qualifications to be relevant in this case. The question for the Commissioner, therefore, is whether she is satisfied, on the balance of probabilities, that the Ministers identified and located all of the information they held and which fell within the scope of Mr Hutcheon's request.

Request a)

9. Mr Hutcheon's application to the Commissioner confirmed that he wished to see the actual bill/invoice for the stay in question. The Ministers provided the investigating officer with a copy of the relevant invoice for the purposes of the investigation.
10. The Ministers acknowledged that Mr Hutcheon asked for the actual bills/invoices, but pointed out FOISA only required them to provide the information requested, not particular documents. In their response to Mr Hutcheon, they believed they had provided the relevant extracts from the invoice to respond to this question.
11. In the Court of Session decision in the case of *Glasgow City Council v The Scottish Information Commissioner* [2009] CSIH 73³, Lord Reed explained (at paragraph [47]):
“... the analytical framework of [FOISA] is based on a distinction between information and records. Since “information” means information recorded in any form (section 73), and the information requested can be provided in different forms (section 11(2)(a)), it is clear that the concept of “information” is independent of the particular form or forms in which information may be recorded. An electronic file, for example, is not different “information” from a hard copy of the file: each of them records the same information, in a different form.”
12. The Commissioner accepts the Ministers' submission that Mr Hutcheon is not entitled to the original invoice. While it is likely to be helpful to provide information in the original form in which it is recorded, with a view to allowing the requester to verify that this is the information held, he is entitled to the information in the invoice which falls within the scope of his request.
13. Mr Hutcheon requested the total accommodation cost for the stay in question. The Commissioner has examined the invoice and is satisfied that this information has been provided to Mr Hutcheon.
14. Having considered the invoice and the Ministers' submissions, the Commissioner accepts that the Ministers interpreted Mr Hutcheon's request reasonably in the circumstances and provided the information they held which fell within the scope of this request. The Commissioner accepts, therefore, that the Ministers complied with Part 1 of FOISA in responding to this request.

³ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



Request b)

15. The Ministers were asked if they held anything to evidence that there was no additional cost in accommodating Mrs Salmond. The Ministers explained that the price, as is standard, was based on the room rate, not on occupancy. The Ministers supplied the investigating officer with a copy of an email from the hotel confirming this.
16. The Commissioner can see no reason to question the explanations and supporting evidence by the Ministers in this connection. She acknowledges that charging for accommodation by the room is now usual practice and considers it unrealistic to expect that someone of Mr Salmond's status would have occupied lesser accommodation had Mrs Salmond not been present. In all the circumstances, she accepts that the Ministers complied with Part 1 of FOISA in responding to this request.

Request c)

17. Mr Hutcheon appeared to expect this information to be recorded, although he provided no reasons why this should be the case.
18. The Ministers were asked to explain whether any information was held that fell within the scope of this request, and whether they would be prepared to disclose any information held.
19. The Ministers responded that "quite simply no further information applicable to the request is held." They explained that the First Minister's office did not record whether or not Mrs Salmond was present with the First Minister where hotel accommodation had been booked for him.
20. The above response is very brief, and generally the Commissioner would expect evidence of steps taken to establish what information an authority held and which fell within the scope of a particular request. She has considered this request carefully in the light of the response received. She has considered whether there might be any reasonable expectation that the Ministers should have a business need for this information, bearing in mind that none has been identified to her, either by them or by Mr Hutcheon. On the balance of probabilities, she accepts in the case of this particular request that the Ministers hold (and held, on receiving the request) no relevant information.

DECISION

The Commissioner finds that the Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Hutcheon.



Appeal

Should either Mr Hutcheon or the Scottish Ministers wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
3 December 2013



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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...