

# Decision Notice



Decision 094/2014 Mr Rab Wilson and the Scottish Parliamentary Corporate Body

Petitions to Public Petitions Committee

Reference No: 201400032  
Decision Date: 1 May 2014

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## Summary

On 18 November 2013, Mr Wilson asked the Scottish Parliamentary Corporate Body (the SPCB) for information about petitions presented to the Scottish Parliament in the past ten years. The SPCB told Mr Wilson it did not hold the information centrally, but provided links to relevant information. Following a review, the SPCB informed Mr Wilson that it considered most of the information he had asked for was already in the public domain and that it did not hold information for one part of the request.

Following an investigation, the Commissioner found that the SPCB did not hold information which would address one part of the request. In relation to the other parts, she found that the SPCB had not responded adequately in terms of Part 1 of FOISA, and required it to review the way it had responded to Mr Wilson.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (4) (General entitlement); 15 (Duty to provide advice and assistance); 16 (Refusal of request); 17 (Notice that information is not held); 19 (Content of certain notices); 21(4) and (5) (Review by Scottish public authority); 25(1) (Information otherwise accessible)

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 and Investigation

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1. The following table summarises the main points of Mr Wilson's requests for information and review made to the Scottish Parliamentary Corporate Body (SPCB), and application for a decision to the Scottish Information Commissioner.



Date	Details
18.11.13	<p><b>Mr Wilson wrote to the SPCB requesting information.</b></p> <p>His request was for information, pertaining to petitions to Holyrood’s public petitions committee</p> <ol style="list-style-type: none"> <li>1. How many petitions have been presented to the Scottish Parliament in the past ten years?</li> <li>2. How many of these petitions have been upheld?</li> <li>3. How many of these petitions have been turned down?</li> <li>4. How many petitioners were satisfied with the outcome of their petition?</li> <li>5. What is the average length of time for processing a petition, from submission to a decision being made on it by the Scottish Parliament?</li> </ol>
28.11.13	<p><b>The SPCB responded to Mr Wilson in terms of FOISA</b></p> <p>The SPCB gave a refusal notice in terms of section 17(1) of FOISA in relation to parts 2-5 of the request. It stated that “the specific information you request is not held centrally”.</p> <p>In relation to part 1, the SPCB told Mr Wilson the number of admissible petitions lodged since 1999 but it is unclear whether this was for Mr Wilson’s interest or the formal response to his request (which was for a different time period).</p> <p>SPCB also stated that “all information on public petitions is available on the Scottish Parliament’s website”. It explained what information was available there and provided weblinks, suggesting that Mr Wilson should be able to find “some” of the information there.</p> <p>The letter was accompanied by an information sheet that set out information on requesting a review and making an application to the Commissioner.</p>
05.12.13	<p><b>Mr Wilson wrote to the SPCB requesting a review of its decision.</b></p> <p>Mr Wilson was dissatisfied because he believed the SPCB should hold the information he was seeking and questioned whether it could be provided through interrogation of its systems.</p>
06.01.14	<p><b>The SPCB notified Mr Wilson of the outcome of its review</b></p> <p>The SPCB informed Mr Wilson, in relation to parts 1, 2, 3 and 5, that the specific information “is not collated in the way you have requested.” It reminded Mr Wilson of the publicly accessible information on its website.</p> <p>In relation to part 5, the SPCB explained that it did not hold any statistical analysis of the petition process, as there was no parliamentary business requirement for that information.</p> <p>The review notice was unclear about whether the SPCB was refusing the request on the grounds that the information was not held, or whether it was refusing it on the</p>



Date	Details
	<p>grounds that it was publicly available. It did not cite any specific provisions of FOISA. Nor did it offer any explanation as to why it was now refusing to respond to point 1, when the initial response had included information on this point.</p> <p>In relation to part 4 of the request, the SPCB explained that it did not hold information identifying how many petitioners were satisfied with the outcome of their petition. It considered “What constituted satisfaction with the outcome of a petition to be subjective and an individual may wish to apply their own criteria to determine what this means for them”.</p> <p>The review notice set out how to contact the Commissioner if Mr Wilson remained dissatisfied.</p>
06.01.14	<p><b>Mr Wilson applied to the Commissioner</b></p> <p>Mr Wilson applied to the Commissioner stating that he was dissatisfied with the outcome of the SPCB’s review, asking for a decision in terms of section 47(1) of FOISA.</p> <p>Mr Wilson questioned the SPCB’s position that it did not hold information [in the way requested], and their inability to respond to what he saw as straightforward questions.</p>

2. The application was validated by establishing that Mr Wilson made a request 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 request. It was then allocated to an investigating officer who contacted the SPCB, giving it an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. The SPCB was asked to confirm which provisions of FOISA it was relying upon in relation to the request, and to justify its reliance on those provisions.
3. Both the SPCB and Mr Wilson provided comments during the investigation.
4. During the investigation, the SPCB identified information which it believed might be of interest to Mr Wilson. This was the outcome of research commissioned from Dr Chris Carman of the University of Glasgow, to consider the workings of the petitions process between 1999 and 2006. This was with a view to better understanding how the petition process was working and how petitions had been handled. The research was also intended to gather information about who submitted petitions to the Parliament and about their experiences. The outcome of this research was published as a committee report and was available on the Scottish Parliament website.



## Commissioner's analysis and findings

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

### General handling the request

6. Section 1(1) of FOISA is clear: "*A person who requests information from a Scottish Public authority which holds it is entitled to be given it by the authority*". In practice this means that a request for information which is in writing (or another recordable format such as email); states the applicant's name and an address for correspondence, and describes the information requested should be considered under FOISA. Section 1(4) provides that the information to be given in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications (which are not applicable in this case).
7. If information is not held by the authority, it should serve notice on the requester under the terms of section 17 telling the requester it does not hold the information. It is good practice to support section 17 notices by explaining (under the section 15 duty to provide advice and assistance) why the information is not held.
8. If information is held but the authority is refusing the request, notice should be served under section 16 of FOISA. Section 16 sets out what such a notice should contain. At sections 16(1)(c) and (d), FOISA specifically states the refusal notice should specify which exemption is being applied and why it applies.
9. Section 19 of FOISA sets out what information should be included in notices about rights of review and appeal.
10. The above is a general summary and should not be taken as a full explanation of duties under FOISA.
11. The Commissioner bases her decisions on an authority's response to the request for review. In particular, she considers what information was disclosed, or withheld and why, at that point. Having considered the full circumstances of this case, it is necessary to understand and comment on the overall process the SPCB followed, from request through to review.
12. It is apparent that Mr Wilson made a valid request for information under FOISA. The SPCB responded in terms of FOISA, but its decision was unclear in relation to part 1 of the request. The information provided in response to part 1 referred only to admissible petitions, offering no explanation to Mr Wilson what this meant and, in any case, was for a different time period than requested. Part 1 was not included in the part of the notice (Annex A) that referred specifically to the application of section 17 of FOISA (information not held).



13. Mr Wilson went on to make a valid request for a review on 5 December 2013. He did not accept the SPCB's assertion that it did not hold the information. The review request did not make any specific reference to the figures provided about "admissible petitions". The SPCB's review response stated that the review was "carried out in accordance with the Freedom of Information (Scotland) Act 2002". It confirmed that in relation to parts 1, 2, 3 and 5 the information was not collated by the SPCB in the way requested. It is unclear from either the response or the SPCB's submissions to the Commissioner whether the review had consciously reached a different decision in relation to part 1 of the request.
14. The review response was ambiguous as to which section of FOISA it relied on. The inference from one part of the review response was that section 17 was applicable to 1, 2, 3 and 5, yet the same response states that "the review panel therefore consider that the information you have requested is already available in the public domain, albeit in a way that is not structured in the way you requested. All the information that is available for us to collate and analyse ... is also available ... for you to analyse." This suggests that the information was held and could be provided but that the SPCB considered it was for Mr Wilson to interrogate it, not them.
15. The review response was clear in relation to part 4, explaining the information was not held and why it was not held. This part of the review response clearly confirmed the original decision and provided advice and assistance to Mr Wilson.
16. When Mr Wilson made his (valid) application to the Commissioner on 6 January 2014, he remained dissatisfied that the SPCB did not hold information and that he was expected to interrogate it.
17. The SPCB's submissions to the Commissioner made a number of points, summarised below:
  - a) The SPCB gave an explanation of the role of the petitions committee and the petitions process, explaining in particular the differences between an "admissible petition" and an "inadmissible petition", and that only admissible petitions are lodged, given a number and published. It went on to explain that the SPCB interpreted the request (all parts) to refer to "admissible petitions". The reason being, that only these were lodged.
  - b) The SPCB explained what information Mr Wilson could access and "count".
  - c) The response re-affirmed the earlier explanation it had given about why the SPCB does not record and hold satisfaction levels.
  - d) The SPCB cited section 17 and 25 of FOISA, but was unclear about which parts of the request they respectively applied to or why.
  - e) In relation to (section 15) advice and assistance duties, the SPCB stated that "gathering and compiling the information [...] in the format he has asked for may be a time consuming task because the parliament does not have any reason to carry out statistical analysis in the way that Mr Wilson has requested. Essentially, we consider that locating the answers to the questions asked by Mr Wilson would take the applicant or ourselves the same amount of administrative time." The submissions did not attempt to quantify that time or



say why it would be unreasonable, in their view, for the SPCB to collate the information held. The SPCB gave an example of how a researcher, Dr C Carman had located and interrogated the publicly available information in 2008, demonstrating that it was possible.

- f) The SPCB stated that the original response and review letter “do not contain any sections of FOISA as we considered them not to be relevant to this request, which in our view rested on a misunderstanding of the function of the Committee”. In fact, the original response did refer to section 17 of FOISA, albeit in annex A, and both the response and the review response made specific reference to the request being considered under FOISA.
  - g) The SPCB’s view was that Mr Wilson’s dissatisfaction did not found a proper complaint under FOISA as it was concerned more with the processes of the Parliament. The request, in the SPCB’s view, was predicated on a misunderstanding of the petitions process and role of the petitions committee.
18. Fundamental to how the SPCB handled Mr Wilson’s request was its interpretation of the request, and the lack of advice and assistance provided to Mr Wilson explaining this.
  19. Part 1 of the request asks for the number of petitions presented to the Scottish Parliament in the last 10 years; while parts 2-5 ask for information about those petitions. It is, therefore, vital that there is a clear understanding of what is meant by “petitions presented”.
  20. The SPCB explained to the Commissioner that it had interpreted “presented” as meaning those petitions which were admissible. It identified rule 15.5<sup>1</sup> of the Standing Orders of the Scottish Parliament as setting out the grounds on which a petition might be found inadmissible. This appears to have been an assumption that was not explored with Mr Wilson.
  21. The Commissioner is not satisfied that it follows from the terms of the request that it concerned only admissible petitions. While the Commissioner can see that an ordinary interpretation of the term “presented”, might in the circumstances of this case have meant, for example, either ‘submitted’ (to be considered right from the start of the petitions process), or presented as in ‘made representation to the Committee on an admissible petition’, it was open to the SPCB (and would have been good practice) to clarify this point had it been in any doubt what Mr Wilson meant by the term presented.
  22. The SPCB appeared to have assumed that Mr Wilson understood the petitions process, so was only asking about admissible petitions. Having considered Mr Wilson’s correspondence as a whole, the Commissioner does not consider this assumption to have been well founded. In the circumstances, she believes it would be reasonable to interpret “presented” as referring to all petitions received by the Parliament, whether they were subsequently found to be admissible or not. Scottish public authorities cannot assume that those requesting information will understand their systems as well as they do, even if information on the relevant process is available publicly.

<sup>1</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/26505.aspx>



23. The Commissioner does not believe the issue of admissibility is one which would be generally apparent to a member of the public making a request about the public petitions process. And there is nothing in the wording of this request to suggest that Mr Wilson himself differentiated between admissible and non-admissible. Indeed, part of his request was in relation to petitions 'upheld' or 'turned down' suggesting he was seeking understanding of the process and its outcomes.
24. There was no evidence in its submissions to the Commissioner that in responding to the request and requirement for review, the SPCB attempted to explain either its interpretation of his request, or the process for rejecting petitions as inadmissible to Mr Wilson,

### **Section 15 of FOISA, advice and assistance**

25. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance, both to those who have made an information request to the authority and to those who intend to do so. In terms of section 15(2), a Scottish public authority is taken to have met this duty where it conforms with the code of practice issued by the Scottish Ministers under section 60 of FOISA (the Section 60 Code)<sup>2</sup>.
26. In the Commissioner's view, it is clear that those parts of the Section 60 Code (in section 1 of Part 2) which relate to obtaining clarification under section 1(3) of FOISA, envisage that the process of obtaining clarification will include the provision of appropriate advice and assistance to enable the applicant to understand why clarification is required.
27. In this case, the SPCB believed the request to be in relation to admissible applications and based on a misunderstanding of the public petitions process. In the Commissioner's view, it was therefore incumbent on the authority to engage with Mr Wilson to both test its assumptions about the interpretation of the request and to provide advice and assistance to aid his understanding of the petitions process.

### **Conclusions**

28. The Commissioner concludes that in misinterpreting the request (in all its parts) as referring only to admissible petitions, the SPCB generally failed to comply with Part 1 of FOISA in responding to the information request made by Mr Wilson because it did not consider the information actually requested.
29. The Commissioner also finds that in failing to attempt to address what it perceived to be a fundamental misunderstanding of the public petitions process in dealing with Mr Wilson's request, the SPCB failed to comply with section 15(1) of FOISA.

### **Part 4, How many petitioners were satisfied with the outcome of their petition?**

30. Although the response to part 4 of Mr Wilson's request is predicated on a misinterpretation of what that request was, the Commissioner has made a specific finding on it, because it is

<sup>2</sup> <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>





irrelevant whether the petitions were admissible or not, the arguments and reasons would apply to both.

31. When considering an application, the Commissioner must consider what recorded information the authority held at the point a request for information was received. She would expect a Scottish public authority to demonstrate it had taken reasonable, proportionate steps to identify and locate any information it held (and which fell within the scope of a request). What she cannot normally consider is whether information should be held, unless she has reason to believe information was being deliberately concealed or had been destroyed to avoid disclosure.
32. It is for the authority to determine its business needs for what information it collects and holds in light of a range of factors from other statutory requirements and codes of practice to business value. FOISA may be instrumental in highlighting gaps in authorities' information holdings but does not confer powers on the Commissioner to challenge those gaps except in the very limited circumstances set out above.
33. The SPCB's response to part 4 of the request was that it had no business need for the information requested and therefore it did not collect it. Mr Wilson believed there should be evidence as to whether petitioners were satisfied with the outcomes of their petitions.
34. The SPCB confirmed that it collected feedback from petitioners in areas it considered to be of value, such as satisfaction with the administrative services provided by the Public Petitions Committee. It did not believe there was any useful purpose to be served in attempting to record "satisfaction" levels in relation to the outcomes of petitions because the notion of "satisfaction" with the outcome of a petition was subjective. An individual might wish to apply their own criteria to determine what this meant for them as it could mean different things for different people. There was no provision for the subsequent review of the Committee's decision on a petition. Consequently, such information was not collected and the SPCB did not hold it.
35. The Commissioner has considered the circumstances of the case carefully. She is satisfied that the SPCB's actions to assess whether it held the information requested were reasonable and proportionate in the circumstances and accepts (on the balance of probabilities), that it was reasonable for the SPCB to conclude that it did not hold any information falling within the scope of part 4 of Mr Wilson's request.
36. The SPCB was therefore correct in giving Mr Wilson notice that it did not hold the information requested at part 4, in terms of section 17(1) of FOISA.

#### **Steps required by the Commissioner**

37. The Commissioner requires the SPCB to carry out a further review in respect of parts 1, 2, 3 and 5 of Mr Wilson's request.
38. She would expect that review to consider afresh:



- (i) What Mr Wilson is asking for, seeking clarification where appropriate
- (ii) Whether the information is held (even publicly available) and to either disclose it, refuse it, or withhold it under the correct FOISA provision(s). The SPCB should ensure that if it applies any exemption to the information following its review, notice of the review outcome contains the same level of information on application of the exemptions as it would in response to the initial request, in terms of section 16 of FOISA.
- (iii) Whether Mr Wilson should be provided with reasonable advice and assistance to improve his understanding of the way in which the public petitions process works, so that he can consider how he frames his request. Should the SPCB maintain that information is reasonably obtainable by Mr Wilson, the Commissioner would also expect the SPCB to provide Mr Wilson with reasonable directions as to where that particular information is to be found (again, with a view to meeting its duty under section 15(1) of FOISA).

39. The time for compliance has been set with all of this in mind.

## DECISION

The Commissioner finds that the Scottish Parliamentary Corporate Body (the SPCB) generally failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Wilson.

She is satisfied that the SPCB was entitled to respond to part 4 of the request on the basis that it did not hold any information, in terms of section 17(1) of FOISA.

In relation to parts 1, 2, 3 and 5 of the request, the Commissioner finds that the SPCB failed to comply with section 1(1) of FOISA. She requires the SPCB to carry out a further review in respect of these parts, in accordance with section 21 of FOISA, having provided such advice and assistance and obtained such clarification as it considers reasonable in the circumstances.

The Commissioner requires the SPCB to issue a response to Mr Wilson, in terms of section 21(5) of FOISA, by 24 June 2014.



## Appeal

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Should either Mr Wilson or the Scottish Parliamentary Corporate Body 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**  
**1 May 2014**



## 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.

...

- (3) If the authority -

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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.

...

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

##### 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-



- (a) discloses that it holds the information;
  - (b) states that it so claims;
  - (c) specifies the exemption in question; and
  - (d) states (if not otherwise apparent) why the exemption applies.
- (2) Where the authority's claim is made only by virtue of a provision of Part 2 which does not confer absolute exemption, the notice must state the authority's reason for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.
- (3) The authority is not obliged to make a statement under subsection (1)(d) in so far as the statement would disclose information which would itself be exempt information.
- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.
- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if-
- (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
  - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.
- (6) Subsections (1), (4) and (5) are subject to section 19.

## 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.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.



## 19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1) or 17(1)) must contain particulars –

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

## 21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-
  - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
  - (b) substitute for any such decision a different decision; or
  - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

## 25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...