

# Decision Notice

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## **Decision 255/2014: Shetland Islands Council and Highlands and Islands Airports Limited**

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### **Board minutes**

Reference No: 201401945

Decision Date: 12 December 2014



Scottish Information  
Commissioner

## Summary

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On 4 February 2014, Shetland Islands Council (the Council) asked Highlands and Islands Airports Limited (HIAL) for its Board minutes since 1 January 2002.

HIAL provided the Council with a copy of the minutes subject to redaction. On review, HIAL indicated that it considered the Council's request to be invalid.

The Commissioner investigated and found that the request in question was valid. Consequently, she required HIAL to review its handling of the request and notify the Council of the outcome.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1) (Requesting information); 21(4) and (5) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 4 February 2014, the Council made a request for information to HIAL. It asked for copies of all HIAL Board Meeting minutes (including appendices) drafted since 1 January 2002.
2. HIAL responded on 10 April 2014 providing the Council with the information requested, subject to redaction.
3. On 20 May 2014, the Council wrote to HIAL requesting a review of its decision. It did not believe HIAL had provided all of its Board minutes for the period specified, and also questioned why information had been redacted without any explanation.
4. Between 20 May 2014 and 30 July 2014, HIAL engaged with the Council in correspondence seeking clarification of the request. The Council maintained that it was clear what information it was seeking
5. HIAL notified the Council of the outcome of its review on 30 July 2014. HIAL stated that FOISA did not provide a right to receive copies of specific documents, only to the information contained within them. It believed the Council's request had been acceded to in the provision of the documents.
6. On 1 August 2014, the Council wrote to the Commissioner. It applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Council stated it was dissatisfied with the outcome of HIAL's review. The Council was not satisfied with:
  - the time taken to respond to its request
  - the adequacy of the information provided, stating that it was incomplete and subject to unexplained and unnecessary redactions
  - HIAL's review outcome.

## Investigation

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7. The case was allocated to an investigating officer. HIAL was invited to provide submissions on the application (as required by section 49(3)(a) of FOISA), to inform the Commissioner's consideration of whether the Council's request was valid for the purposes of FOISA (as HIAL appeared to be claiming that it was not). HIAL responded with submissions.

## Commissioner's analysis and findings

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

### Validity of request

9. HIAL's review outcome is ambiguous, but the Commissioner considers it reasonable to interpret it as concluding that the Council's request was seeking documents rather than information and therefore was invalid. From its terms, it is not really possible to conclude that a review was being concluded in any other terms compliant with FOISA.
10. Section 8(1) of FOISA sets down the basic requirements for a valid request for information made in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested.
11. HIAL explained the scope of its operations and the significant volume of information thus captured in the Board minutes. The Council's request was broad in scope: HIAL argued that it would have been better placed to locate the desired information and make it available to the Council, if the Council had made an attempt to narrow the request. HIAL submitted that it had engaged with the Council in an effort to identify what information the Council was actually seeking, but this (in HIAL's view) had resulted in the request effectively being widened. In any event, the Council maintained that it was seeking all Board minutes for the specified period.
12. HIAL submitted that the extremely broad scope of the Council's request and the Council's reluctance to narrow the scope meant it was not possible for HIAL to provide a meaningful and relevant collection of information. It highlighted the perceived burden of responding. It did not provide clear submissions on the validity of the request, although asked to do so.
13. The Commissioner has dealt section 8(1)(c) of FOISA before (see, for example, *Decision 096/2010 Mr Rami Okasha and the Scottish Ministers*<sup>1</sup> - there have also been a number of more recent decisions following the same general reasoning). Previous decisions take into consideration the Commissioner's guidance on the validity of requests<sup>2</sup>, produced in the light of the Court of Session decision in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73*<sup>3</sup> (the Glasgow City Council case).

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2010/200902059.aspx>

<sup>2</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/CourtofSessionGuidance2010/Validrequests.aspx>

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

14. The Commissioner 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 in the Glasgow City Council case) 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.
15. In this case, the Council requested copies of Board minutes. The Commissioner finds it reasonably clear that the Council was seeking the information recorded in the Board minutes. The Commissioner also notes that the Council provided a specific time range for these documents. The Council was seeking a discrete and readily identifiable set of information, even if it might relate to a broad and diverse range of matters.
16. As has been stated in previous decisions on the questions of validity, 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) of FOISA. 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. Accordingly, the only requirement is that the description is clear enough to allow the information to be identified and located.
17. The Commissioner acknowledges that a request which specifies a subject matter may be *easier* for a public authority to deal with in terms of identifying and locating the information requested. That will depend, however, on how the authority has chosen to structure and manage its records. Such choices cannot, in the Commissioner's opinion, have any bearing on whether a request is valid. That question must be capable of determination on objective standards (that is, whether a Scottish public authority, acting reasonably, should be capable of identifying the information from the description provided), not subjective ones capable of being influenced by the particular authority which has received the request.
18. As indicated above, there is no suggestion in section 8(1)(c) that a valid request for information must refer to a subject matter. The applicant cannot reasonably be expected to have a detailed knowledge of all the information requested. They may be aware of other parameters which enable the information to be identified and located: if so, as appears to the Commissioner to be the case here, the requirements of section 8(1)(c) will still have been met.
19. The Commissioner has considered the Council's requests in the light of the relevant submissions she has received, the Court of Session decision in the *Glasgow City Council* case and the related guidance and decisions produced by the Commissioner. In this case, she is satisfied that the description provided by Council was clear. Consequently, the Commissioner cannot accept that the difficulty experienced by HIAL was one of identification. She finds that it would have been reasonable for any applicant in the Council's position to believe that they had described the information they were seeking adequately, as required by section 8(1)(c) of FOISA. In all the circumstances, therefore, she is satisfied that the request (and therefore the subsequent application to the Commissioner) was valid.
20. In light of her finding that the Council's request was valid, therefore, the Commissioner requires HIAL to review their handling of this request and notify the Council of the outcome of the review. This must lead to an outcome compliant in all respects with section 21(4), communicated to the Council in accordance with section 21(5) of FOISA. In applying any

provisions of FOISA it considers relevant, the Commissioner would urge HIAL to consider her published guidance carefully.

## Decision

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The Commissioner finds that Highlands and Islands Airports Limited (HIAL) 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 information request made by Shetland Islands Council (the Council).

In the circumstances, the Commissioner concludes that the request made by the Council adequately described the information sought and, fulfilling all other requirements of section 8(1) of FOISA, was a valid request for the purposes of section 1(1). Therefore, the Commissioner concludes that HIAL was under an obligation to respond to the Council's request, on the basis that it was a valid request for information.

On the basis that this request is valid, the Commissioner requires HIAL to conduct a review in relation to the Council's request, in accordance with section 21(4) of FOISA, and notify the Council of the outcome of that review in accordance with section 21(5), by **26 January 2015**.

## Appeal

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Should either Highlands and Islands Airports Limited or Shetland Islands Council 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.

## Enforcement

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If Highlands and Islands Airports Limited fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Highlands and Islands Airports Limited has failed to comply. The Court has the right to inquire into the matter and may deal with Highlands and Islands Airports Limited as if it had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**12 December 2014**

### 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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#### 21 Review by Scottish public authority

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- (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.

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