



Scottish Information
Commissioner

**Decision 063/2006 – Mr Robert Stephen and the
Scottish Parliamentary Corporate Body**

*Request for correspondence relating to petitions PE716 and PE854
submitted to the Public Petitions Committee of the Scottish
Parliament*

**Applicant: Mr Robert Stephen
Authority: Scottish Parliamentary Corporate Body
Case No: 200502832
Decision Date: 12 April 2006**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 063/2006 – Mr Robert Stephen and the Scottish Parliament

Request for correspondence relating to petitions PE716 and PE854 submitted to the Public Petitions Committee of the Scottish Parliament – section 17 – information not held – Section 19 – content of certain notices

Facts

Mr Stephen submitted petitions PE716 and PE854 to the Public Petitions Committee of the Scottish Parliament, both of which called for legislation to introduce the equitable financing of Scotland's harbours. Following the Public Petitions Committee's discussion of the petitions Mr Stephen made a request under the Freedom of Information (Scotland) Act 2002 for correspondence which it had received during its deliberations. The Scottish Parliamentary Corporate Body (the Parliament) sent copies of the Public Petitions Committee's correspondence which related to petition numbers PR716 and PE854 to Mr Stephen in response. Mr Stephen did not accept that he had received all of the correspondence which the Parliament held, and requested that it review its response to him. The Parliament responded, stating that it upheld its initial response, and that it did not hold any further information. Mr Stephen remained dissatisfied, and applied to the Scottish Information Commissioner for a decision.

Outcome

The Commissioner finds that the Parliament complied with section 1(1) of the Freedom of Information (Scotland) Act 2002 in responding to Mr Stephen's request in that it provided the applicant with all of the information which it held.

However, he found that the Parliament failed to provide Mr Stephen with information about his right to a review and his right to appeal to the Commissioner as required by section 19 of the Freedom of Information (Scotland) Act 2002.

The Commissioner did not require the Parliament to take any steps to remedy this breach.



Appeal

Should either the Scottish Parliamentary Corporate Body or Mr Stephen 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 of receipt of this notice.

Background

1. On 18 June 2005, Mr Stephen wrote to the Scottish Parliamentary Corporate Body (“the Parliament”) requesting all of the correspondence which it held relating to petitions PE716 and PE854 submitted to the Public Petitions Committee (“the Committee”). In particular, he asked for:
 - a) All correspondence between the Clerk of the Committee and the Scottish Executive relating to petitions PE716 and PE854
 - b) All correspondence between the Convenor and members of the Committee and the Scottish Executive relating to petition numbers PE716 and PE854
 - c) All correspondence between the Committee and Aberdeenshire Council relating to petitions PE716 and PE854
2. In its response to Mr Stephen of 28 June 2005, the Parliament stated that it had already provided him with all correspondence between the Committee and the Scottish Executive and between the Committee and Aberdeenshire Council in relation to petition PE716, prior to his request being made. However, it provided further copies of these documents to him in response to his request for information made on 18 June 2005.
3. Finally, the Parliament stated that it did not hold any correspondence between the Committee and any other organisation, including the Scottish Executive and Aberdeenshire Council, relating to petition PE854.
4. Mr Stephen was not satisfied that he had been provided with all of the information which he had requested, and so wrote to the Parliament on 29 June 2005 requesting that it review its response to his request.
5. The Parliament carried out a review of the way in which it had handled Mr Stephen’s request, and wrote to him on 11 August 2005 with the results of that review. It had found that it held no further information in relation to Mr Stephen’s request, and therefore upheld its initial response.



6. Mr Stephen remained dissatisfied and on 14 August 2005 applied to me for a decision, as he argued the Parliament did not provide him with all of the information which he had requested.
7. The case was allocated to an investigating officer.

The Investigation

8. Mr Stephen's appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request.
9. The investigating officer wrote to the Parliament on 20 December 2005 for its comments the application and for any other information which it held in relation to this case. The Parliament responded on 11 January 2006, providing comment on the search methods it had used to locate the information which the applicant had requested. It also confirmed that it did not hold any further information relating to the applicant's request.
10. Further correspondence took place between the investigating officer and the Parliament through January, February and March 2006, seeking clarification on the methods used to search for the information, and on issues raised by the applicant in relation to his request.
11. During the investigation the investigating officer asked the Parliament to comment on a statement made by the Convenor of the Committee during its debate on petition PE854. In his response to a request made by a member of the Committee for correspondence relating to petition PE716, the Convenor replied that although he was happy to release documents which were already in the public domain to the member, to release documentation relating to petitions which were not already in the public domain would set a dangerous precedent. It was this statement which, according to his application to the Commissioner, had alerted Mr Stephen to the possibility that further correspondence might be in existence.
12. The Parliament clarified the Convenor of the Committee's position on this matter in its email to my Office of 1 March 2006. It stated that the Committee would not make submissions in relation to a petition public prior to its consideration of that petition. After the Committee's discussion of the petition, all papers relating to it are made available to the public as a matter of course.



The Commissioner's Analysis and Findings

Section 19 of the Freedom of Information (Scotland) Act 2002 (FOISA)

13. Section 19 of FOISA states that a refusal notice from a Scottish public authority should advise the requestor of their right to request a review under section 20(1) of FOISA, and to apply to the Scottish Information Commissioner under section 47(1) of FOISA.
14. I find that the Parliament failed to comply with the requirements of Part 1 of FOISA in that it failed to advise Mr Stephen of his right to ask for a review of the decision or about his rights to apply to me for a decision as required by section 19(b) of FOISA in its initial response of 28 June 2005. Despite this, Mr Stephen did ask for a review and made an application to me and so was not prejudiced by this failure. I therefore do not require the Parliament to take any action as regards this technical breach of FOISA.

Was further information held by the Parliament in relation to Mr Stephen's request?

15. In effect, Mr Stephen asked for all of the correspondence held by the Parliament in relation to petitions PE716 and PE854. The Parliament provided Mr Stephen with information relating to PE716 (some of which had been provided to him already) and stated that it did not hold any information relating to PE854.
16. During my investigation, the Parliament stated that it retained an electronic and hard copy file of correspondence relating to petitions submitted to the Committee. It went on to say its search for the correspondence which the applicant had requested involved manually searching the paper files relating to the Committee's discussion of petitions PE716 and PE854, along with the electronic files for the same petitions. No further information relating to PE716 was found to be held in any of these files.
17. In relation to PE854, I examined the Parliament's official report of the discussion of the petition, which took place on 25 May 2005. I noted that no correspondence had been tabled in the discussion of the petition and that the Committee had agreed to take no subsequent action. I also requested that the Parliament provide me with information relating to the methodology used to search its filing systems for any correspondence relating to Mr Stephen's request. The Parliament had stated that it had used the same search methodology for correspondence relating to both petitions submitted by the applicant to the Committee.



18. Having investigated the way in which the Parliament searched for information, I conclude that it conducted a full search of its records in response to Mr Stephen's request, encompassing all places in which it might be reasonable to expect material of this kind to be found. I have found no evidence to support the existence of further correspondence which the Committee holds in relation to either petition PE716 or petition PE854. I am satisfied that the Parliament has provided sufficient confirmation that the information is not held.

Decision

I find that the Scottish Parliamentary Corporate Body (the Parliament) complied with section 1(1) of the Freedom of Information (Scotland) Act 2002 in responding to Mr Stephen's request for information in that it provided the applicant all of the information which it held relating to his request.

However, I find that the Parliament failed to provide Mr Stephen with information about his right to a review and his right to appeal to the Commissioner as required by section 19 of the Freedom of Information (Scotland) Act 2002.

I do not require the Scottish Parliament to take any steps to remedy this breach.

Kevin Dunion
Scottish Information Commissioner
12 April 2006