

# Decision Notice



Decision 083/2008 Mr Ellis Thorpe and Scottish Enterprise

*Menie House Estate in Aberdeenshire*

Reference No: 200701251  
Decision Date: 17 July 2008

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr Thorpe requested from Scottish Enterprise Grampian (SEG) certain information relating to the involvement of SEG and Scottish Enterprise (SE) in the promotion of the Menie Estate in Aberdeenshire as a golf resort. SEG responded by providing some of the information requested by Mr Thorpe, confirming that it did not hold the remainder of the information requested. Following a review which upheld the original decision, Mr Thorpe remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that SEG had dealt with Mr Thorpe's request for information in accordance with Part 1 of FOISA, by stating that it did not hold certain of the information requested. However, the Commissioner also found that SEG had failed to provide Mr Thorpe with such advice and assistance as would reasonably have been expected in relation to some of the information he requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 15 (Duty to provide advice and assistance) and 17 (Notice that information is not held).

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

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1. On 11 July 2007, Mr Thorpe wrote to SEG requesting the following information:
  - (a) When, where and to whom did SE/SEG "promote" the Menie Estate as a golf resort?
  - (b) Which "marketing materials" are referred to in the letters? Please will you make an example available?
  - (c) Please will you make available minutes of any meetings between SE/SEG and the Trump Organisation and Agents etc?



- (d) Please will you make available minutes of any meetings with any party concerning the development of the Menie Estate as a golf resort, prior to the involvement of the Trump organisation?
  - (e) When, where and by whom was the Trump Organisation approached as the potential developer of Trumpton?
  - (f) Please will you make available minutes of the meeting with the Trump Organisation to propose the development?
2. SEG responded on 7 August 2007. In its response, SEG provided a brief explanation in answer to part (a) (that SE/SEG did not *directly* promote the Menie Estate as a golf resort), a copy of a DVD in relation to part (b) and, with respect to the remaining information requested, confirmation that it did not hold the information. SEG added that should Mr Thorpe be dissatisfied with its response, he should request a review from the Chief Executive of SE.
  3. On 14 August 2007, Mr Thorpe wrote to the Chief Executive of SE requesting a review of SEG's decision. In particular, he sought transparency in relation to the process through the provision of full answers to his six questions.
  4. The Chief Executive of SE carried out the review on SEG's behalf and notified Mr Thorpe of the outcome on 13 September 2007. The review upheld SEG's original decision, confirming that it had provided all relevant information it held to Mr Thorpe and emphasising that SE/SEG did not promote the Menie Estate to the Trump Organisation.
  5. On 18 September 2007, a letter was received from Mr Thorpe by the Commissioner's Office, stating that he was dissatisfied with the outcome of the review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The application was validated by establishing that Mr Thorpe had made a request for information to a Scottish public authority (SEG being a company wholly owned by SE and therefore a publicly owned company as defined by section 6 of FOISA) and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



## Investigation

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6. On 12 February 2008, the investigating officer notified SE (which had by then fully absorbed the operations of SEG and was dealing with the application) in writing that an application had been received from Mr Thorpe and asked it to provide the Commissioner's Office with its comments on the application, as required by section 49(3)(a) of FOISA. In particular, SE was asked to clarify its (and SEG's) involvement with the Menie Estate and to provide details of the searches used to establish what information it held pertinent to Mr Thorpe's request. It was also asked to provide copies of any relevant information released to Mr Thorpe already, including a copy of a preliminary feasibility study released in response to a previous information request.
7. SE subsequently responded by providing a copy of the preliminary feasibility study (commissioned by SE to look at the viability of the Menie Estate as a golf resort), along with responses to the questions asked by the investigating officer. These submissions shall be considered further in the Commissioner's analysis and findings below.
8. During the course of the investigation, Mr Thorpe drew the investigating officer's attention to a newspaper article, which in part looked at the role of Scottish Development International (SDI) in promoting the Menie Estate. SDI is a joint venture of the Scottish Ministers, SE and Highlands and Islands Enterprise with the role of attracting foreign investment to Scotland and reference was made in the article to its possible involvement in attracting the Trump organisation to the Menie Estate. Mr Thorpe highlighted this article because it was his view that SE/SEG might have had a greater role in attracting the Trump organisation to the Menie Estate than they were suggesting they had. The investigating officer sought clarification of the relationship between SDI and SE, seeking SE's comments regarding this. SE confirmed that SDI was not a separate entity and therefore it had treated Mr Thorpe's request as covering SDI also, with SDI's records and staff being considered along with its own.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions and other information presented to him, by both Mr Thorpe and SE and he is satisfied that no matter of relevance has been overlooked.
10. The six specific parts of Mr Thorpe's request for information are outlined in paragraph 1 above. In his request for review, Mr Thorpe emphasised that he wanted to establish how £30,285 of taxpayer's money had been spent by SE/SEG in promoting the Menie Estate, by obtaining full responses to the six specific parts of his original request. In his application to the Commissioner, Mr Thorpe emphasised his interest in establishing what benefit had been gained from the spending of taxpayer's money in this context. Mr Thorpe's dissatisfaction with the responses he had received focused on his concerns that he had not been provided with all information pertaining to his request.



11. The question for the Commissioner in this case, therefore, is whether SEG provided Mr Thorpe with all the information it held falling within the scope of his request for information.
12. In its submissions, SE maintained that it believed Mr Thorpe had been provided with all relevant information it held, or which had been held by SEG. It provided details of the searches it had undertaken to confirm if any information covered by the request was held in either its Glasgow (Headquarters) or Aberdeen (former SEG) offices. SE confirmed that it had reviewed the relevant project files, which held both hard copy and electronic data (including email data), and spoken to relevant staff within the organisation. SE went on to say that any information relating to the project would have been inserted into the relevant project files, in accordance with its records management procedure: following filing of the relevant information, any informal notes would be destroyed. In addition, however, it had searched the email accounts of all staff involved in the project. The relevant staff in both offices had also been interviewed.
13. With respect to part (a) of Mr Thorpe's request, the Commissioner notes SEG's submission to Mr Thorpe that it did not "directly promote" the Menie Estate as a golf resort. In its submissions to the Commissioner, SE expanded on this by explaining that its role (and that of SEG) had consisted of providing the Menie Estate with assistance in producing marketing material, a promotional DVD and a preliminary feasibility study, which was then used by the Menie Estate to promote itself. It went on to add that this type of support was in line with its inward investment activities and further added that the Trump organisation had contacted the Menie Estate directly without any involvement from itself. Therefore, there had been no need for SE/SEG to directly promote the Menie Estate.
14. SEG had previously made available to Mr Thorpe a copy of the preliminary feasibility study referred to above. In response to part (b) of his request, SEG made available a copy of a promotional DVD produced as part of the marketing assistance it had provided to the Menie Estate. In relation to parts (a) and (b), SEG argued (as did SE in its subsequent submissions to the Commissioner) that it had supplied Mr Thorpe with all relevant information held.
15. The Commissioner wishes to note, however, that the response issued by SEG to Mr Thorpe in relation to part (a) was clearly lacking in detail. The additional explanation provided to the Commissioner as part of the investigation could have been made to Mr Thorpe and on this basis the Commissioner would highlight an authority's duty under section 15 of FOISA to provide an applicant with advice and assistance in relation to a request for information, so far as it is reasonable to expect it to do so. The Commissioner finds in the circumstances that SEG did not provide Mr Thorpe with such advice and assistance as it would have been reasonable to expect on this point, and therefore that it failed to comply fully with the duty contained in section 15 of FOISA.



16. In relation to Mr Thorpe's request overall, however, the Commissioner accepts the searches and other enquiries undertaken by SEG, and subsequently by SE, as reasonable and adequate in the circumstances of this case. Having considered the submissions made by Mr Thorpe and SE, the Commissioner is satisfied that SE does not (and that SEG did not at the time of Mr Thorpe's request) hold any other information falling within the terms of the request. Consequently, the Commissioner concludes that SEG dealt the request in accordance with Part 1 of FOISA by giving notice in terms of section 17(1).

## DECISION

The Commissioner finds that Scottish Enterprise Grampian (SEG) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Thorpe. The Commissioner finds that by advising Mr Thorpe that it did not hold certain of the information he had asked for (that is, all information requested in addition to what was provided), SEG complied with Part 1 of FOISA and particularly section 17(1).

However, the Commissioner also finds that SEG failed to provide Mr Thorpe with such advice and assistance as it would have been reasonable to expect it to do in relation to part (a) of Mr Thorpe's request, in relation to some of the information he requested. In failing to provide such advice and assistance, SEG failed to comply with section 15 of FOISA. Given the more comprehensive explanation of the response to point (a) received in the course of the investigation and set out above, the Commissioner does not require any further action in response to this particular application in relation to this failure.

## Appeal

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Should either Mr Thorpe or Scottish Enterprise 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**17 July 2008**



## Appendix

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### Freedom of Information (Scotland) Act 2002

#### 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).

#### 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.

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