

Decision Notice



Decision 016/2010 Mr Tony Cameron and the Scottish Ministers

Termination by the Scottish Prison Service of its membership of the International Corrections and Prisons Association

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Summary

Mr Tony Cameron requested from the Scottish Ministers (the Ministers) information relating to their decision to instruct the Scottish Prison Service (SPS) to terminate its membership of the International Corrections and Prisons Association (ICPA). The Ministers responded by releasing some information to Mr Cameron, whilst withholding the other information under section 30(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, the Ministers released additional information, but continued to withhold some relevant information. Mr Cameron remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Ministers released further information to Mr Cameron, but continued to withhold the some information, which is the subject of this decision.

Following an investigation, the Commissioner found that the Ministers had acted in accordance of FOISA by withholding most of the information under consideration. However, he found that the exemptions in section 30(b) had been misapplied to some information contained in an email exchange, which he required to be released to Mr Cameron. The Commissioner also noted that the Ministers had failed to comply with the timescales for responding to Mr Cameron's request and subsequent request for review.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions); 10(1) (Time for compliance); 15 (Duty to provide advice and assistance); 21(1) (Review by Scottish public authority) and 30(b) and (c) (Prejudice to effective conduct of public affairs).

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 27 August 2008, Mr Cameron emailed the Scottish Ministers (the Ministers) requesting information held in relation to the decision to instruct the Scottish Prison Service (SPS) to withdraw from its membership of International Corrections and Prisons Association (ICPA). This instruction was issued by the Cabinet Secretary for Justice to the Chief Executive of the SPS. The decision to issue this instruction is referred to as “the Ministers’ decision” in what follows.
2. The Ministers responded on 13 November 2008, disclosing some of the requested information, but withholding the rest in terms of the exemptions in sections 30(b)(i) and (ii) of FOISA. They also apologised to Mr Cameron for the delay in responding to his request. The Ministers explained that this was due to a “technical fault” which meant that the original email had not been picked up.
3. On 2 December 2008 Mr Cameron emailed the Ministers seeking clarification and further information on a number of points, in the light of considering the disclosed information. These questions had the effect of querying whether all information requested had been identified when the Scottish Ministers responded to his request. Mr Cameron made clear that he was not at this stage seeking a formal review of the Minister’s handling of his information request.
4. The Ministers responded on 7 January 2009, providing clarification on its handling of Mr Cameron’s request. The Ministers made clear that the types of information highlighted by Mr Cameron had been identified when first considering the request, and had been withheld in terms of the exemptions specified. This letter enclosed some additional information relating to a Scottish Parliamentary Question made in 2008, which had apparently been omitted from the initial response.
5. On 3 February 2009, Mr Cameron emailed the Ministers requesting a review of their decision. In particular, Mr Cameron expressed dissatisfaction with the Ministers’ decision to withhold even factual information about their decision concerning the withdrawal of the SPS from the ICPA.
6. The Ministers notified Mr Cameron of the outcome of their review on 16 March 2009. Having considered his comments with regard to factual information, additional information considered to be factual was disclosed, subject to the redaction of names and personal details of officials.
7. On 23 March 2009, Mr Cameron emailed the Commissioner, 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. Mr Cameron acknowledged that further information had been disclosed following the review, but stated this still did not provide the information he wished to access. He argued that it was in the public interest to see the exchanges concerning the Ministers’ decision, and to know who was involved in these. Mr Cameron also expressed dissatisfaction with the delays in the handling of his request.



8. The application was validated by establishing that Mr Cameron had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

9. On 3 April 2009, the Ministers were notified in writing that an application had been received from Mr Cameron and asked to provide the Commissioner with any information withheld from him. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
10. The investigating officer contacted the Ministers on 22 April 2009, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested and to explain what searches they had carried out to identify all the information that fell within the scope of Mr Cameron's request. The Ministers provided a response to the investigating officer's letter.
11. In further correspondence, the Ministers were asked further questions regarding the extent of the information identified as falling within the scope of Mr Cameron's request. These enquiries were prompted by noting that the content of one document suggested that certain other information existed and would fall within the scope of Mr Cameron's request, which was not included within the items supplied for the Commissioner's consideration. The Ministers responded on this point by submitting that the relevant information was no longer held.
12. The Ministers were subsequently asked by the investigating officer to provide further comments on the public interest in this case, and with regard to the information that appeared no longer to be held.
13. The Ministers' response to this request indicated that, following further discussions of this case, they had decided to disclose most of the information that had previously been withheld from Mr Cameron. On 6 October, the Ministers disclosed further information to Mr Cameron.
14. The Ministers provided additional submissions to the investigating officer on 8 October 2009 stating their reasons for withholding the remaining information from Mr Cameron. The Ministers submitted that they were now relying on sections 30(c) and 38(1)(b) to some of the information withheld, while the rest was still considered exempt in terms of section 30(b).
15. During the course of the investigation, Mr Cameron was invited to provide his comments on the public interest in disclosure of the information being withheld by the Ministers under section 30(b).



16. Mr Cameron was given a further opportunity to comment after the additional exemptions in sections 30(c) and 38(1)(b) were cited by the Ministers. At this stage, Mr Cameron confirmed that he was content to accept the withholding a personal mobile phone number, to which the exemption in section 38(1)(b) had been applied.
17. However, further correspondence between the investigating officer and Mr Cameron confirmed that he did wish still to access the information (including names and other personal information relating to officials) that had been removed from the documents disclosed to him following the Ministers' review.
18. After this matter was raised with the Ministers, they confirmed that they no longer wished to withhold this information. They disclosed complete copies of the relevant items to Mr Cameron on 28 January 2010.
19. Mr Cameron has indicated that he is content for the Commissioner's decision to consider only the information that the Ministers wished still to withhold at the end of the investigation of his case.

Commissioner's analysis and findings

20. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Cameron and the Ministers and is satisfied that no matter of relevance has been overlooked.

Court of Session Opinion – requests for documents and similar

21. The Commissioner would first of all note that the Mr Cameron's information request asked for information and "papers" relating to the Ministers' decision. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA provides a right to information, not documents. However, the Court said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
22. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Cameron and the Ministers that the Ministers questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Ministers have subsequently had with the Commissioner that the Ministers were unclear as to what the information request sought.



23. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.
24. In what follows, the Commissioner's views on a number of matters regarding the Ministers' handling of Mr Cameron's information request will be set out in turn. He first considered whether appropriate steps were taken to identify all relevant information falling within the scope of Mr Cameron's request, and so whether he is satisfied that all relevant information held at the time of their receipt of the request has either been supplied or identified as withheld.

Adequacy of searches

25. As noted above, it was identified during the investigation that certain information was referred to within the withheld information which, if held, would fall within the scope of Mr Cameron's information request. In particular, documents provided to the Commissioner referred to communications regarding the ICPA having been received by the Cabinet Secretary for Justice from three sources and then passed to an official who was preparing a report. Only one such email was included among the information supplied to the Commissioner by the Ministers.
26. When questioned on the steps taken to identify relevant information, the Ministers submitted that their searches had encompassed all relevant officials' and business areas, including the Private Office of the Cabinet Secretary for Justice, and the SPS. The Ministers also provided a note of the various keywords which had been used in searching their electronic document management and records system.
27. The Ministers stated that their searches had been wide and thorough, and consequently they had retrieved more information than actually fell within the scope of Mr Cameron's request.
28. The Ministers indicated that the failure to locate all of the emails referred to within the information withheld had been noted at the time, and additional steps were taken to check with both the Private Office of the Cabinet Secretary for Justice and the relevant official to establish whether they held the information. However, the Ministers confirmed that the relevant information had not been located.
29. The Ministers accepted that it was clear that the emails were available to the relevant official for the purposes of preparing a report, but pointed out that this had been completed some time before the request was received from Mr Cameron. They noted also that it was possible that the emails concerned had been received by the Cabinet Secretary for Justice via his Scottish Parliamentary email account, in which case they might never have been received within the Scottish Government's information systems.
30. Having considered the information supplied by the ministers on the searches undertaken to establish what information was held falling within the scope of Mr Cameron's request, the Commissioner is satisfied that sufficient searches were conducted to enable all relevant information to be identified.



31. In particular, the Commissioner is satisfied that steps were taken to establish whether the two “missing” emails referred to within the withheld information were held at the time of Mr Cameron’s request. The Commissioner is satisfied that, on balance of probabilities, the Ministers no longer hold this information, and did not hold it at the date of the request.

Information under consideration

32. At the commencement of the investigation of this case, the Ministers identified 13 documents as containing the information withheld from Mr Cameron. However, they went on to argue in their submissions that the information in items 9 and 13 actually fell outwith the scope of Mr Cameron’s request.
33. Document 13 post-dates the Ministers’ decision regarding the instruction for the SPS to withdraw from membership of the ICPA. Having considered the content, and noting that it relates to matters other than that decision, the Commissioner accepts that this falls outwith the scope of Mr Cameron’s request. Document 13 will therefore not be considered any further in this decision.
34. With respect to document 9, the Ministers noted that it was an email to the official compiling a report, intending to contribute to that process, but it was sent after that report’s completion. The Ministers suggested that, in the circumstances, its content had no practical bearing on the content of the report and played no part in the Ministers’ decision.
35. The Commissioner has noted the Ministers’ comments on document 9, but he has also considered that Mr Cameron’s request sought information “relevant to” the Ministers’ decision. There is no suggestion that only information that had a “practical bearing” on this decision should be considered. Given that the content of this document is clearly relevant to (and was intended to provide information to contribute to) the ministers’ decision, the Commissioner has concluded that this item does fall within the scope of Mr Cameron’s request. This document has therefore been considered in what follows.
36. As noted above, Mr Cameron has indicated that he is content for the Commissioner’s decision to consider only the information that had not been supplied to him by the end of the Commissioner’s investigation. Since much of the previously withheld information was supplied to Mr Cameron, the only items that remain to be considered in what follows are (following the numbering found in the schedule provided to the Commissioner by the Scottish Ministers):
- All information contained in items 7, 9 and 10
 - Information withheld from the released versions of items 4, 5 and 8
37. The withheld information is contained within email correspondence and an associated attachment relating to the decision to instruct SPS’s withdrawal from ICPA.



Consideration of exemptions

38. The Ministers applied the exemption in section 30(b)(i) and (ii) to most of the information they continued to withhold from Mr Cameron. After disclosing part of item 8 during the investigation, the Ministers no longer sought to apply the exemptions in section 30(b) to the information within this item that they still wished to withhold. With respect to information (and only this information), they applied the exemptions in sections 30(c) and 38(1)(b).

Sections 30(b)(i) and (ii) of FOISA

39. The exemptions under section 30(b) of FOISA are qualified exemptions, which means that where a public authority finds that certain information falls within the scope of the exemption it is then required to go on to consider the application of the public interest test laid down in section 2(1)(b) of FOISA.
40. In order for the Ministers to be able to rely on the exemptions laid down in section 30(b)(i) and 30(b)(ii) of FOISA, they would have to show that the disclosure of the information under FOISA would, or would be likely to, inhibit substantially (i) the free and frank provision of advice and (ii) the free and frank exchange of views for the purposes of deliberation, respectively.
41. The Commissioner's views on the application of these exemptions have been set out at length in a number of decisions, most notably 089/2007 **Mr James Cannell and Historic Scotland** and 105/2008 **Mr Rob Edwards and the Scottish Ministers**.
42. While he will not repeat these views in full, the Commissioner would reiterate that, in coming to a decision on the application of these exemptions, he will consider the actual information withheld, not simply the category of information to which it belongs or the situation in which the request has arisen. It cannot necessarily follow from the Commissioner requiring release of one particular piece of information that such information will require to be disclosed routinely in the future. The Commissioner looks for public authorities to demonstrate a real risk or likelihood that actual harm will occur at some time in the near (certainly the foreseeable) future, not simply that harm is a remote possibility. Also, the harm in question should take the form of substantial inhibition from expressing advice and/or views in as free and frank a manner as would be the case if disclosure could not be expected to follow. The word "substantial" is important here: the degree to which a person will or is likely to be inhibited in expressing themselves has to be of some real and demonstrable significance.
43. The Ministers contended that the information to which this exemption was applied contained often free and frank comment for the purposes of advice and deliberation, and that its disclosure would substantially inhibit both the free and frank provision of advice and the exchange of views for the purposes of deliberation.



44. Their submissions commented upon each item which had been partly or wholly withheld, highlighting the nature of the information concerned, the participants to the exchanges, and the anticipated effect of disclosure on future discussions and decision making processes. In general, the Ministers' argument was that disclosure of this remaining information would lead to officials and Ministers being inhibited in their comments or advice in future discussions of this type.
45. Mr Cameron has argued that disclosure of the information would not be likely to cause real, actual and significant harm.
46. The Commissioner has considered the submissions presented by the Ministers on the application of the exemptions in sections 30(b)(i) and (ii) as well as the content of the withheld information to which these have been applied. The Commissioner has taken into consideration that those involved in the discussions concerned were either Ministers or senior officials who would have been well aware that any recorded information held by the Ministers might be requested under FOISA.
47. However, having had regard to the particular information that the Ministers still wish to withhold under these exemptions, the Commissioner has concluded in most instances that disclosure of that information would or would be likely to have the effect of inhibiting officials and/or Ministers from soliciting or providing advice and/or views freely and frankly in future. The Commissioner has concluded that this information contains advice and exchanges of views exhibiting a level of candour with respect to which the participants would have justifiably have expected would not be made publicly available. He accepts that disclosure of this information would be likely to have the effect of making participants in such processes in future less likely to make known their views so fully or frankly.
48. As a result, the Commissioner has found that the exemptions in section 30(b) were correctly applied to (the withheld parts of) items 4, 5, 7 and 10. He also accepts that these exemptions were correctly applied to some of the information withheld in item 9.
49. Having considered the information withheld in item 9, the Commissioner has noted that some of this is factual in nature, providing background information on ICPA which was intended to inform the Ministers' decision making on whether SPS membership should continue. Where the withheld information is broadly factual, the Commissioner has concluded that the disclosure would not be likely to lead to the substantial inhibition of either the provision of advice or the exchange of advice or views for the purposes of deliberation. His view is that the following information was incorrectly withheld under the terms of sections 30(b)(i) and (ii) of FOISA.
 - (1) in the email dated 4 April 2009 time 10:57 - all information excluding the final 2 sentences.
 - (2) in the email dated 4 April 2008 time 10:37 – all information excluding the first and final paragraphs.



50. Having found that no exemption cited by the Ministers applies to this information (and so not being required to go on to consider the public interest test in relation to this information), the Commissioner requires Ministers to disclose information specified in paragraph 49 to Mr Cameron.

Public Interest test

51. As the Commissioner is satisfied that the exemptions in section 30(b) have been correctly applied to all of the information withheld within items 4, 5, 7, 10, and to some parts of item 9, he is required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA in relation to this information. He must therefore consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemptions.
52. Mr Cameron has argued that disclosure of information relating to the Ministers' decision is in the public interest. He submitted that there had been an abrupt change in position by the Ministers, whereby a position of apparent support for the SPS's membership of ICPA was changed, and the SPS was instructed to withdraw from its membership.
53. He went on to argue that the public interest favoured disclosure of information that would reveal the reasons for this change of position, the process that led to the decision, and the evidence upon which the Ministers took their decision. He noted that this would confirm whether decision was taken for the reasons that had been stated, and that disclosure of information concerning the timing of the decision would enable consideration of the fairness and propriety of the decision.
54. The Ministers' submissions on the public interest test acknowledged that there was a general public interest in the disclosure of information which allows the public to see for itself sources of advice, and to obtain a better understanding of how decisions are made. Ministers also acknowledged the public interest in being able to demonstrate that decisions are made after full consultation. Their decision to disclose additional information to Mr Cameron during the investigation recognised this public interest.
55. However, with respect to the remaining withheld information, the Ministers continued to maintain that there was a stronger public interest in ensuring that officials and Ministers having a private space within which to deliberate and formulate an appropriate response to a contentious issue. They maintained that the circumspection that would (in their view) inevitable follow from disclosure of this information could not be in the public interest, which lies in the due consideration of all opinions before arriving at an agreed position.
56. Ministers went on to comment that the information that had been disclosed to Mr Cameron provided a clear indication of the decision-making process, and that the disclosure of further information would have little or no instructional value to him.



57. The Commissioner has considered all of the comments made by both Mr Cameron and the Ministers. He has also noted that the Ministers reconsidered their position and disclosed much of the information withheld in this case after Mr Cameron made his submissions on the public interest.
58. While he agrees with much of what Mr Cameron has said, that it is in the public interest that the Ministers' decision making process in this case (and in general) is transparent, he notes that the effect of the additional disclosures in this case has been to provide Mr Cameron with a relatively full understanding of the decision-making process.
59. He does not consider that the information he has found to be exempt in terms of section 30(b) would provide significant additional insights into that process, or the basis upon which it the decision was taken. His view is that the weight of Mr Cameron's arguments is therefore limited when considering the remaining information to which the exemptions in section 30(b) have been successfully applied in this case.
60. Having balanced the arguments made by both parties to this case, the Commissioner has concluded that the public interest in favour of releasing the information found to be exempt in terms of section 30(b) is outweighed by the public interest in maintaining these exemptions. The Commissioner has therefore decided that the Ministers were justified in maintaining the exemptions in sections 30(b)(i) and (ii) in respect of the withheld information within items 4, 5, 7, and 10, and to the parts of item 9 to which it was found that they were successfully applied.

Section 30(c)

61. The exemption in section 30(c) applies where the disclosure of information would "otherwise" prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. The use of the word "otherwise" signifies that this exemption is to be used other than in the situations envisaged by the exemptions in section 30(a) and (b). However, section 30(c) remains a broad exemption, and the Commissioner expects any public authority citing it to show what specific harm would be caused to the conduct of public affairs by release of the information. The exemption in section 30(c) is subject to the public interest test.
62. As noted above, the Ministers applied the exemption in section 30(c) to the information they continued to withhold within item 8. Most of this item was disclosed to Mr Cameron during the investigation, but the Ministers withheld information within this document that would identify two individuals who had been consulted during the process leading to the Ministers' decision.
63. It might be helpful to note at this stage that information identifying a third individual who had been consulted was disclosed to Mr Cameron, along with their comments, during the investigation. The comments of the other two individuals were not located when the Ministers had searched for information relevant to Mr Cameron's request, and the searches undertaken have been considered above. Therefore, the only information located in this case which identified these two individuals is contained within document 8. The information disclosed to Mr Cameron has revealed, however, that three third parties were consulted as part of the decision making process.



64. The Ministers argued releasing information identifying the two third parties without their express permission – particularly third parties expressing free and frank opinions about issues of controversy and written with the expectation of confidentiality - would substantially prejudice others from making similar contributions. They noted that permission to disclose had been provided by the third party whose identity and comments had been disclosed.
65. The Ministers submitted that such contributions, whether from individuals or organisations, play an important role in ensuring that officials and Ministers are informed of all aspects of an issue and in a wider sense underpin the effective conduct of public affairs. They maintained that the likelihood of release of the identity of the contributor, when the contributions are not available for release, would make it less likely that third parties would contribute. They maintained that since the relationship between Ministers, officials and third parties is the key to the effective conduct of public affairs, then anything prejudicial to this relationship (in this case disclosure) would in turn be prejudicial to the effective conduct of public affairs.
66. The Commissioner has considered the Ministers' submissions on this exemption, and noted the information to which it relates. He has noted a reference within the documents released to the anonymisation of the comments of the individuals concerned, and accepts that there appears to have been an expectation that the identities of the individuals concerned should not be known widely, even within internal discussions.
67. The Commissioner would note that he does not consider that it would be routinely the case that the identities of third parties contributing to Government policy should be withheld. However, the Commissioner accepts in this case that the individuals concerned would not have expected their contributions to become public. In the circumstances, he accepts that these or other individuals would be likely to be more reticent to engage fully in response to requests for comment of the type that is relevant in this case.
68. The Commissioner accepts that the disclosure of this information would or would be likely to prejudice substantially the effective conduct of public affairs, and so he accepts that the exemption in section 30(c) applies to the withheld information contained within item 8.

Public interest in relation to section 30(c)

69. Having concluded that the exemption in section 30(c) applies to the information withheld within item 8, the Commissioner must also consider the public interest test in relation to this information.
70. The Ministers indicated that they consider it crucial that third parties are able to contribute, sometimes anonymously, to discussion and debate regarding Government policy. They maintained that the importance of obtaining views, sometimes controversial, from as large a variety of sources as possible, is critical to the effective conduct of public affairs.
71. They went on to argue that the public interest has been met via the release of the substance of the report and that any public interest in the release of individual names is outweighed by the wider public interest in protecting third parties from exposure in the interests of ensuring future engagement with government and, consequently, the effective conduct of public affairs.



72. The Commissioner has considered the weight of these arguments in relation to those made by Mr Cameron with regard to the public interest in understanding the process followed by the Ministers in reaching their decision. The Commissioner acknowledges that revealing the identities of those who offered comments to the Ministers would contribute to fully understanding the decision-making process. In particular, it would enable consideration of whether the people whose views were taken into account were appropriately qualified to comment on this matter.
73. However, the Commissioner has already acknowledged that it is clear that there was an expectation that the identities of the individuals concerned would not be made public. In the circumstances, the Commissioner must give greater weight to the Ministers' arguments in this case. He accepts that during the investigation of this case, the Ministers have taken steps to reveal information which satisfies to a significant extent the public interest in understanding the decision-making process.
74. Having balanced the public interest in relation to the information withheld in terms of section 30(c), the Commissioner has concluded that the public interest in maintaining this exemption outweighs the public interest in disclosure of the information withheld.
75. The Commissioner has therefore found that the Ministers were entitled to withhold the information concerning the identities of the two individuals contained within item 8.
76. Having drawn this conclusion, it is not necessary for the Commissioner to go on to consider the exemption in section 38(1)(b) in relation to this information.

Technical breaches - timescales

77. Mr Cameron also raised concerns with the time taken by the Ministers to respond to his request for information and the subsequent request for a review.
78. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
79. The Commissioner finds that the Ministers failed to respond to Mr Cameron's request for information of 27 August 2008, within the 20 working days allowed by section 10(1) of FOISA.
80. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exemptions which are not relevant in this case.
81. The Commissioner also finds that the Ministers failed to respond to Mr Cameron's requirement for review of 3 February 2009 within the 20 working days allowed under section 21(1) of FOISA.
82. The Commissioner has determined that the Ministers breached the timescales for response to a request under section 10 and request for review under section 21(1) of FOISA.



83. As the Ministers subsequently provided responses to Mr Cameron, the Commissioner does not require any action to be taken. However, the Commissioner urges the Ministers to note these breaches and consider what steps they can take to ensure appropriate and more timeous responses in future.

DECISION

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

The Commissioner finds that the Ministers correctly applied the exemptions in section 30(b) of FOISA to the information in items 4, 5, 7, and 10 that they still sought to withhold by the end of his investigation. He also found that these exemptions had been correctly applied to certain information within item 9. The Commissioner also found that the exemption in section 30(c) had been correctly applied in relation to the withheld information within item 8. The Ministers' decision to withhold this information was in accordance with Part 1 of FOISA.

However, the Commissioner found that the exemptions in section 30(b) of FOISA had been wrongly applied in respect of the other parts of document 9 specified in paragraph 50 above. By failing to disclose this information, the Commissioner finds that the Ministers failed to comply with Part 1 and section 1(1) of FOISA.

The Commissioner therefore requires the Scottish Ministers to release to Mr Cameron the information specified in paragraph 49, by 19 March 2010.

The Commissioner also finds that the Ministers failed to comply Part 1 of FOISA by failing to respond to Mr Cameron's information request and subsequent request for review within the timescales laid down by sections 10 and 21(1) of FOISA respectively. The Commissioner does not require the Ministers to take any action in respect of these breaches in response to this decision.



Appeal

Should either Mr Cameron or the Scottish Ministers 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
2 February 2010



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.

(...)

- (6) This section is subject to sections 2, 9, 12 and 14

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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).

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.