

# Decision Notice



Decision 009/2012 Mr David Rule and the Scottish Ministers

STV Group plc

Reference No: 201101932  
Decision Date: 9 January 2012

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr David Rule submitted a request to the Scottish Ministers (the Ministers) for “all information held by the First Minister's Office regarding the STV Group plc and communications with that media company.” The Ministers failed to respond. Following a review, as a result of which the Ministers advised Mr Rule that they did not consider his request to be valid under FOISA, Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the Ministers accepted the request to be valid and responded to Mr Rule's request for a review, the Commissioner found that the Ministers had failed to deal with Mr Rule's request for information in accordance with Part 1 of FOISA, initially by failing to respond to his request and thereafter by incorrectly concluding that the request was invalid.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1)(c) (Requesting information); 10(1)(a) (Time for compliance) and 21(1) (Review by Scottish Public Authority)

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 8 July 2011, Mr Rule wrote to the Ministers, requesting “all information held by the First Minister's Office regarding the STV Group plc and communications with that media company”.
2. On 12 August 2011, Mr Rule wrote to the Ministers again, requesting a review on the basis that they had failed to respond to his request.
3. Mr Rule did not receive a response to his requirement for review and, on 16 September 2011, wrote to the Commissioner, stating that he was dissatisfied with the Ministers failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The case was allocated to an investigating officer, who informed the Ministers in writing that an application had been received from Mr Rule and sought their comments.



5. The Ministers notified Mr Rule of the outcome of their review on 11 October 2011. The Ministers apologised for not acting upon Mr Rule's request for information until that time, but also stated that, having considered the Court of Session ruling in the case of Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73<sup>1</sup>, they considered the request to be invalid in terms of section 8(1)(c) of FOISA.
6. On 14 October 2011, Mr Rule wrote to 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. He withdrew his earlier application in respect of the Ministers' failure to respond.

## Investigation

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7. On 18 October 2011, the Ministers were notified in writing that an application had been received from Mr Rule and were asked to provide the Commissioner with any submissions they may have as to why Mr Rule's request for information should not be considered valid in terms of section 8 of FOISA.
8. The Ministers responded on 1 November 2011, restating their view that they did not consider Mr Rule's request for information to be valid. The case was then allocated to an investigating officer.
9. The investigating officer contacted the Ministers on 3 November 2011, 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 view that the request was invalid.
10. The Ministers responded on 1 December 2011, having reconsidered the matter and concluded that Mr Rule's request was valid. They provided Mr Rule with a response on this basis. Mr Rule acknowledged that he had received a response to his request for review, but did not wish to withdraw his application to the Commissioner for a decision.

## Commissioner's analysis and findings

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

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<sup>1</sup> <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



## Validity of requests

12. The Commissioner is pleased to note that, in the course of the investigation, the Ministers accepted that Mr Rule's request for information was a valid one. Taking account of his own guidance on the validity of requests<sup>2</sup>, issued in the light of the Court of Session decision referred to above, he considers this to have been the correct approach.
13. Section 8 of FOISA sets out the key elements of a valid request for information for the purposes of FOISA. In particular, section 8(1)(c), on which the Ministers relied in responding to Mr Rule, requires that a valid request must describe the information requested. As the guidance referred to in the previous paragraph makes clear, the purpose of a description is to allow the authority to identify and locate the information. If the authority requires further information to identify and locate the requested information, section 1(3) of FOISA (which the Ministers did not choose to apply in this case) provides the framework for obtaining that further information.
14. In this case, the Commissioner considers Mr Rule's description of the requested information to have been sufficiently clear to enable its identification and location. While having taken account of the Ministers' earlier submissions to the effect that the terms of the request did not provide adequate assistance in identifying and locating the information, he cannot accept this as a reasonable interpretation in the circumstances. He has noted in particular Mr Rule's perceived failure to specify a subject matter or topic as a key element in the argument that the request lacked specification. While he has made it clear in previous decisions (most recently *Decision 245/2011 Mr David Rule and the Scottish Ministers*) that this is not an essential prerequisite of a valid description, in this case he would also question whether it was reasonable to conclude that no subject matter or topic had been identified. The request specified information "regarding the STV Group plc and communications with that media company": even if it may not align readily with the way in which information is managed by the Ministers, it is difficult on any reasonable interpretation to argue that it is not a subject matter or topic.
15. In this case, therefore, the Commissioner is satisfied that the description provided in Mr Rule's request fulfilled the requirements of section 8(1)(c) of FOISA. Consequently, he is satisfied that the request was a valid one for the purposes of section 1(1) of FOISA (to which the Ministers were therefore obliged to respond in terms of Part 1 of FOISA).
16. Given the Ministers' response, in the course of the investigation, to what they now considered to be a valid request, the Commissioner does not require any further action on this point in this particular case.

## Failures to respond

17. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.

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<sup>2</sup> <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



18. Given that the Ministers did not respond to Mr Rule's request of 8 July 2011, the Commissioner finds that the Ministers failed to respond to that request within the 20 working days allowed by section 10(1) of FOISA.
19. Section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
20. Given the Ministers' failure to respond to Mr Rule's requirement for review of 12 August 2011 prior to his application to the Commissioner, the Commissioner finds that the Ministers failed to respond to that requirement within the 20 working days allowed by section 21(1) of FOISA.
21. Given the Ministers' response to the requirement for review in the course of the investigation, the Commissioner does not require the Ministers to take any action in relation to this failure in this particular case.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) 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 Mr Rule, by wrongly finding that the request failed to meet the requirements of section 8(1)(c) of FOISA.

In addition, the Commissioner finds that the Ministers failed to respond to Mr Rule's request and requirement for review within the respective timescales specified in sections 10(1) and 21(1) of FOISA.

Given the Ministers' eventual response to Mr Rule's request as a valid one, the Commissioner does not require the Ministers to take any action in respect of these failures in response to Mr Rule's application.



## Appeal

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Should either Mr Rule 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.

**Margaret Keyse**  
**Head of Enforcement**  
**9 January 2012**



## 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.

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##### 8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...

##### 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

...

##### 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.

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