

Decision Notice



Decision 016/2012 Mr David Rule and the Scottish Ministers

First Minister's attendance at Wimbledon

Reference No: 201101914

Decision Date: 30 January 2012

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Rule requested from the Scottish Ministers (the Ministers) information held regarding the First Minister's attendance at the Wimbledon Tennis Championships. The Ministers failed to respond and, following a review, as a result of which the Ministers stated that no information was held, Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had failed to deal with Mr Rule's request for information in accordance with Part 1 of FOISA, by incorrectly stating that they held no information falling within the scope of Mr Rule's request. However, he was satisfied that the Ministers had, by the end of the investigation, identified all the information they held which fell within the scope of the request.

While finding technical failures in the Ministers' handling of the request, given that the information was provided to Mr Rule during the investigation, the Commissioner did not require the Ministers to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 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

1. On 7 July 2011, Mr Rule wrote to the Ministers requesting all information held by the First Minister's Office regarding the First Minister's attendance at the Wimbledon Tennis Championships 2011.
2. On 12 August 2011, Mr Rule wrote to the Ministers 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 application was validated by establishing that Mr Rule 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 failure to respond to that request. The case was then allocated to an investigating officer.
5. The investigating officer informed the Ministers in writing that an application had been received from Mr Rule regarding their failure to respond.
6. As a result, the Ministers notified Mr Rule of the outcome of their review on 12 October 2011. They apologised for not acting upon Mr Rule's request for information until that time, but informed Mr Rule that they did not hold any information falling within the scope of his request.
7. On 12 October 2011, Mr Rule wrote to the Commissioner's office, withdrawing his application regarding the Ministers' failure to respond to his request for review, 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.
8. The application was validated by establishing that Mr Rule 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. The case was then allocated to an investigating officer.

Investigation

9. On 28 October 2011, the investigating officer notified the Ministers in writing that an application had been received from Mr Rule, 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 explain the steps they had taken to identify and locate the information Mr Rule had requested. They were also asked to comment on their compliance with the technical requirements of FOISA.
10. The Ministers responded on 21 November 2011, indicating that, having carried out further searches, it transpired that they did hold information falling within the scope of Mr Rule's request (in that they held a briefing paper). In an email of 16 December 2011, they also advised that the information identified had been provided to Mr Rule with the redaction of personal data in terms of section 38(1)(b) of FOISA. Mr Rule, who confirmed he had received the information, accepted such redactions (which will therefore not be considered further), but continued to seek a decision from the Commissioner.



11. The Ministers also provided submissions in support of their position that they did not hold any further information.
12. The relevant submissions obtained from Mr Rule and the Ministers will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

13. 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.

Technical issues

14. The Commissioner will first of all consider the technical issues raised by Mr Rule, who complained that the Ministers failed to respond to his request and his subsequent requirement for review within the timescales allowed.
15. 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.
16. Mr Rule's request for information was dated 7 July 2011. Given that the Ministers did not respond to the request, the Commissioner finds that they failed to respond within the 20 working days allowed by section 10(1) of FOISA.
17. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject again to exceptions which are not relevant in this case.
18. Mr Rule's requirement for review was dated 12 August 2011. Given that the response to the requirement for review was dated 12 October 2011, the Commissioner finds that the Ministers failed to comply with section 21(1) of FOISA.

Information held by the Ministers

19. In his application to the Commissioner, Mr Rule indicated that he did not accept the Ministers' contention that no information was held. He suggested that the delay in dealing with the request meant that relevant information might have been transferred to the Ministers' central archive by the time the review was carried out.



20. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
21. The Ministers submitted that, during the investigation, they carried out searches of records in the First Minister's Office and, due to the delay in responding to Mr Rule's request, searches were also undertaken of the Scottish Government Electronic Records and Document Management System using specific search criteria. This was to ensure that any information which might have been held by the First Minister's Office at the time of the request would be identified.
22. The Ministers submitted that, as a result of the searches undertaken, one piece of information was identified as falling within the scope of the request. The Ministers stated that the First Minister's Office did not recall having seen it at the time of the event (Mr Salmond's attendance at which had been arranged at short notice, by telephone) and it was only discovered during the search of the Electronic Records and Document Management system.
23. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Ministers interpreted Mr Rule's request reasonably and took adequate steps during the investigation to establish what information they held which fell within the scope of that request. Any relevant information identified has now been provided to Mr Rule.
24. The Commissioner accepts therefore, on the balance of probabilities, that the Ministers do not (and did not, at the time they received the request) hold any further information falling within the scope of Mr Rule's request. He also finds, however, that the Ministers failed to comply with section 1(1) of FOISA in dealing with the request, by incorrectly notifying Mr Rule that they did not hold any of the information requested.



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 failing to provide Mr Rule with the information they held and which fell within the scope of his request.

The Commissioner also finds that the Ministers failed to respond to Mr Rule's information request and requirement for review within the respective periods required by sections 10(1) and 21(1) of FOISA.

Given that he is satisfied the Ministers provided Mr Rule with any relevant information they held during the investigation, the Commissioner does not require the Ministers to take any action.

Appeal

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
30 January 2012



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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

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-

...

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.

...