

# Decision Notice



Decision 078/2012 Mr David Rule and the Scottish Ministers

Whether requests vexatious

Reference No: 201200271  
Decision Date: 25 April 2012

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## Summary

Mr Rule requested from the Scottish Ministers (the Ministers) all information held by the First Minister's Office contained in correspondence with any one of a list of 19 named people. The Ministers failed to respond, and Mr Rule requested a review. Following the review, the Ministers informed Mr Rule that they considered his requests to be vexatious in terms of section 14(1) of FOISA. Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had dealt with Mr Rule's request for information in accordance with Part 1 of FOISA, being satisfied that they had been justified in dealing with the requests as vexatious.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) and 14(1) (Vexatious or repeated requests).

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

## Background

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1. On 29 May 2011, Mr Rule wrote to the Ministers requesting all information held by the First Minister's Office contained in correspondence with any one of 19 named individuals.
2. On 29 June 2011, having received no response to his requests, Mr Rule wrote to the Ministers requesting a review of their failure to reach a decision on the request.
3. Mr Rule did not receive a response to his requirement for review and, on 12 August 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. Following this application, on 16 September 2011 the Ministers notified Mr Rule of the outcome of their review. They stated that they did not consider the request to be valid in that it did not, as required by section 8(1)(c) of FOISA, describe the information requested.
5. On 23 September 2011, having withdrawn his earlier application, Mr Rule wrote to the Commissioner's office, 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.
6. As a result of this application, the Commissioner issued *Decision 245/2012 Mr David Rule and the Scottish Ministers*,<sup>1</sup> which required the Ministers to consider the requests as valid and to respond to Mr Rule's request for review in terms of section 21 of FOISA.
7. The Ministers responded to Mr Rule on 6 February 2012 in terms of section 21(8) of FOISA, informing him that no review would be carried out on the basis that they considered the request to be vexatious in terms of section 14(1) of FOISA.
8. On 7 February 2012, Mr Rule wrote to the Commissioner, stating that he was dissatisfied with the way in which the Ministers had dealt with his request for information and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Rule had made requests 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 those requests. The case was then allocated to an investigating officer.

## Investigation

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10. On 16 February 2012, the Ministers were notified in writing that an application had been received from Mr Rule and were invited to comment on the application, as required by section 49(3)(a) of FOISA. In particular, they were asked to explain why they had considered Mr Rule's request to be vexatious in terms of section 14(1) of FOISA.
11. The Ministers responded on 14 March 2012, providing an explanation of their position.
12. Mr Rule's submissions, along with those of the Ministers, (where relevant) will be considered fully in the Commissioner's analysis and findings below

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<sup>1</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2011/201101773.asp>



## Commissioner's analysis and findings

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

### Section 14(1) – vexatious requests

14. Section 14(1) of FOISA does not oblige a Scottish public authority to comply with a request for information under section 1(1) (which confers a general entitlement to information held by such authorities) if the request is vexatious.

#### *Whether a request is vexatious*

15. FOISA does not define the word "vexatious". The Commissioner's general approach (although each case will be considered on its merits) is that a request (which may be a single request, the latest in a series of requests, or one among a large number of individual requests) will be vexatious where it would impose a significant burden on the public authority and one or more of the following conditions can be met:
- (a) it has the effect of harassing the public authority; and/or
  - (b) it does not have a serious purpose or value; and/or
  - (c) it is designed to cause disruption or annoyance to the public authority; and/or
  - (d) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
16. In the response informing Mr Rule that they were not conducting a review, the Ministers informed him that they had taken account of paragraph 9 of *Decision 245/2011*, in which the Commissioner stated that it would be appropriate to interpret Mr Rule's email of 29 May 2011 as containing 19 separate requests. They informed him that they considered the requests to be vexatious on the basis that to respond would impose a significant burden on the authority. They also considered the requests to be manifestly unreasonable, to have the effect of harassing the First Minister's Office and to be designed to cause disruption or annoyance to that Office. The Ministers further explained that they considered the requests to lack serious purpose or value.

#### *Comments from Mr Rule*

17. In his application to the Commissioner, Mr Rule commented on the response he had received from the Ministers as to why they considered his requests to be vexatious.
18. Mr Rule accepted that it was reasonable for the Ministers to consider his 19 requests as a series of requests. While accepting that the First Minister's Office might be small and extremely busy, the Ministers themselves were a very large public authority, for which the requests could not be considered to impose a significant burden.



19. Mr Rule noted that the Ministers had taken account of previous requests he had made in concluding that the 19 requests of 29 May 2011 were manifestly unreasonable. In the absence of some ongoing grievance with the Ministers, he did not consider his earlier requests to be relevant. He noted that his requests covered a wide variety of subject matters, each of which he considered to be of public interest. He believed his requests to be simple in nature, not to request a large volume of information and capable of being dealt with in a way which did not affect the core operations of the Scottish Ministers. Consequently, he submitted, any reasonable person would consider the requests reasonable and proportionate.
20. Mr Rule disagreed that his requests had the effect of harassing the Ministers, noting that his language was polite and he waited patiently for a response. As indicated above, he believed them to be simple in nature and written in a way which made them easy to deal with. Consequently, he considered their effect on the First Minister's Office to be small: in any event, he suggested, they could easily be dealt with by a member of staff from another department, and so the effect on the public authority as a whole need not be anything more than negligible.
21. In relation to the Ministers' claim that his requests lacked any purpose or value, Mr Rule contended that there was a clear focus to his requests, as each individual named within the request had publicly endorsed a political party. He believed there was a public interest in knowing how the Ministers interacted with these individuals.
22. Responding to the Ministers' claim that the requests were designed to cause disruption or annoyance to the First Minister's Office, Mr Rule reiterated his belief that there was a clear public interest in the information being released. His intention was to better understand the functioning of government.

#### *Submissions by the Ministers*

23. In responding to the Commissioner, the Ministers maintained that Mr Rule's requests were vexatious in terms of section 14(1) of FOISA, expanding on the arguments they had presented to Mr Rule earlier.
24. The Ministers clarified the operational procedures within the First Minister's Office. They explained that this Office consisted of a small team and was the busiest office in the Scottish Government, having to deal with a wide-ranging subject base which placed numerous demands on staff time.
25. They explained that, while the Scottish Government had only one electronic records and document management system, documents relating to the First Minister were (to maintain security around the First Minister and his administrative arrangements and thus allow him to carry out his duties without disruption) held in a secure area, accessible only by the small team working within the First Minister's Private Office. As a result, the Ministers explained, all requests for information relating to the First Minister could only be dealt with by a staff member from his Private Office: contrary to Mr Rule's understanding, they could not be dealt with elsewhere and thus would affect their core operations.



26. The Ministers further explained that they had repeatedly informed Mr Rule that the First Minister's Office held incoming correspondence for no more than three months. This was because information passing through the First Minister's Office concerned the working of the entire government. As correspondence was assigned to the appropriate policy area to deal with (and this would include decisions on retention and storage), it would be deleted from the First Minister's Private Office systems.
27. The Ministers believed the requests to be vexatious as they formed part of a continuing pattern of behaviour resulting in a significant burden to the First Minister's Office, considered collectively with associated correspondence. They referred to 14 other requests for information in 2011, all but one being directed at the First Minister, his Office or his Special Advisers, and to an "escalating trend of request-making" which had started in August 2008 (a "significant number" of the 69 requests Mr Rule had submitted since then having been "targeted" in the same way). All of this suggested, in the view of the Ministers, that Mr Rule was purposefully targeting the First Minister's Office. Given what they considered to be the broad and unfocused nature of these requests, they considered responding to them particularly burdensome.
28. The Ministers also responded to Mr Rule's assertion that his requests were "simple in nature" and "do not request a large volume of information". In this connection, they did not understand how Mr Rule would be aware of what information was held by the Scottish Government and thus what volume of information might be within the scope of his requests or what work might be required to identify and supply any such information.
29. In the circumstances described above, the Ministers argued, 19 requests received in quick succession did have the effect of harassing a small, busy office. They acknowledged that this might not have been his intention, but stated that the perceived cumulative effect of the requests received from Mr Rule in 2011 had been one of harassment. They noted the efforts they believed they had made to explain to Mr Rule how he could lessen the burden of his requests, regretting that this had been ineffective and that the nature of his requests continued to cause considerable difficulties for a team attending to the vast and changeable conditions and requirements of working in an extremely busy Ministerial office.
30. Finally, the Ministers responded to Mr Rule's assertion that his requests had a clear focus, in relating to individuals who had all publicly endorsed a political party. This, they pointed out, had not been made clear in his requests. While they did not consider the political preferences of an individual to be a matter for the Scottish Government, they did consider specification of this kind to have the effect of narrowing down the focus of each request in a way which might have assisted them in identifying any information falling within its scope. Noting the absence of such clarification from Mr Rule, it was not clear to the Ministers how information relating to the 19 named individuals would have allowed him to have a better understanding of the functioning of government.
31. In all the circumstances, the Ministers concluded, the use of any further time and resources to respond to Mr Rule's request would have been unreasonable and disproportionate.





*The Commissioners' conclusions*

32. The Commissioner has considered the Ministers' submissions carefully, along with those received from Mr Rule. She cannot accept all of the Ministers' expectations as being wholly reasonable. It is not, for example, unreasonable to expect that an office at the heart of government (such as the First Minister's Office) will be the subject of a considerable number of requests for information. As the Ministers seem to acknowledge themselves, it may be unreasonable to expect the requester (who cannot be expected to have as comprehensive an understanding of an authority's records as the authority itself) to frame his or her request for information too tightly.
33. That said, the Commissioner's briefing on section 14 of FOISA<sup>2</sup> acknowledges that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its financial and human resources away from its core operations. It also acknowledges that the applicant's identity, and the history of their dealings with a public authority, *may* be relevant in considering the nature and effect of the request and the surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context and therefore refuse the request as vexatious, although it does not follow that such an applicant's requests should automatically be refused as a result of their history: each decision has to be based on its own facts and circumstances.
34. In this case, the Commissioner is not entirely persuaded of the relevance of Mr Rule's previous requests, which cover a wide range of topics and which might be difficult (on the face of it) to characterise as forming a pattern. It appears unsurprising to the Commissioner that so many of these requests, given the nature of their subject matter, have been directed at the First Minister's Office: in any event, as she has indicated above, she takes the view that the First Minister's Office should expect to receive a considerable number of requests and should prepare itself for that eventuality.
35. In the circumstances, given that the Minister's arguments in this respect are based so substantially on the nature of the First Minister's Office and of Mr Rule's requests, the Commissioner has difficulty accepting their contention that these requests (considered either on their own or collectively with other requests he has made) had the effect of harassing the First Minister's Office. Equally, beyond a broad assertion that Mr Rule has purposefully targeted the First Minister's Office (supported by no evidence apart from the number of requests), there would appear to be no basis for concluding that the requests were designed to cause disruption or annoyance to that Office.
36. However, the Commissioner has also taken into consideration the fact that Mr Rule made all 19 of these requests together. Depending on the circumstances, that might be considered to impose a significant burden on the authority receiving the requests. As noted above, the Commissioner would consider a significant burden to exist when the request imposes disproportionate demands on the authority's time and resources.

<sup>2</sup> <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2513&SID=2591>



37. In *Decision 245/2011*, the Commissioner found it reasonable to conclude that Mr Rule's 19 requests shared a common characteristic, to the extent that they all related to persons in the public eye. It does not necessarily follow, however, that they should have been found to share anything else in common. Mr Rule mentioned nothing about the political preferences of these individuals in any of his correspondence with the Ministers. She does not believe it would have been reasonable to expect Scottish Government officials dealing with the requests (even as individuals who might be expected to possess a reasonable degree of political awareness) to deduce this – or, for that matter, any other unifying characteristic – simply from the list of names they were presented with.
38. While she has not done so lightly, the Commissioner finds it appropriate to conclude in this case that Mr Rule's 19 requests lacked any serious purpose or value. Requesters should, of course, be free to request information without being required to disclose why they require that information. On the other hand, some requests will be so evidently lacking in purpose or value that it is reasonable to take that into account in applying section 14(1). Here, on the face of it, Mr Rule would appear to have presented the Ministers with a basically random list of 19 public figures. There must be a point at which it is reasonable for an authority to ask itself whether the content of a request is such that the demands placed on its time and resources in dealing with the request would be wholly disproportionate to any purpose served.
39. Taking all of the relevant submissions into consideration, therefore, the Commissioner is satisfied that dealing with Mr Rule's requests did, in the circumstances, present a significant burden to the Ministers. She finds that it would have been disproportionate to require the Ministers to deal with the requests, finding it reasonable for the Ministers to have concluded that they lacked serious purpose or value.
40. Consequently, the Commissioner has concluded that the Ministers were correct in refusing to comply with Mr Rule's requests for information, on the basis that they were vexatious and therefore section 14(1) of FOISA applied.

## DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information requests made by Mr Rule.



Decision 078/2012  
Mr David Rule  
and the Scottish Ministers



## Appeal

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Should either Mr Rule or the 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**  
**Acting Scottish Information Commissioner**  
**25 April 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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- (6) This section is subject to sections 2, 9, 12 and 14.

##### 14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

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