

# Decision Notice



Decision 095/2013 Mr David Rule and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201300723  
Decision Date: 17 May 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

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## Summary

On 18 November 2012, Mr Rule asked the Scottish Ministers (the Ministers) for all information they held regarding either the Trump Organisation or Donald Trump, originating between specified dates. Following a review, the Ministers refused to comply with the request on the basis that doing so would exceed the £600 cost limit. During the investigation, Mr Rule narrowed his application to ask for a decision only in respect of the Ministers' compliance with timescales.

Following an investigation, the Commissioner found that the Ministers had failed to deal with Mr Rule's request for information and requirement for review within the relevant statutory timescales.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1)(a) (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

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1. On 18 November 2012, Mr Rule wrote to the Ministers requesting:  
*... a copy of all information held by the Scottish Executive regarding either the Trump Organisation or Donald Trump originating after 15 May 2007 and before 1 November 2009. In order not to make a repeat request for information released in my earlier request [reference stated], I do not ask you to provide information released or redacted (under section 38(1)(b)) as part of that request. However, if it is easier to send this information again please feel free to do so.*
2. Having received no response, on 7 January 2013 Mr Rule wrote to the Ministers requesting a review in respect of their failure to respond.



3. Following the intervention of the Commissioner's office, the Ministers notified Mr Rule of the outcome of their review on 4 March 2013. Apologising for their delay in responding, they stated that the costs of locating, retrieving and providing the information requested would exceed £600. The Ministers therefore relied on section 12(1) of FOISA in refusing to comply with the request: they also suggested ways in which Mr Rule might consider reducing the scope of his request, so that the cost could be brought below £600.
4. On 7 March 2013, 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.
5. The application was validated by establishing that Mr Rule made a request for information to a Scottish public authority and 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. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Ministers confirmed their reliance on section 12(1) of FOISA.
7. During the investigation, Mr Rule withdrew his application insofar as it related to the Ministers' application of section 12(1). However, he confirmed that he still wished a decision on the Ministers' compliance with the timescales in sections 10 and 21 of FOISA.
8. The relevant submissions received from both the Ministers and Mr Rule will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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9. 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. She is satisfied that no matter of relevance has been overlooked.
10. The Ministers apologised for their failure to adhere to the timescales.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.



12. Since the Ministers did not provide a response to Mr Rule's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
13. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to certain exceptions which are not relevant in this case.
14. Since the Ministers did not provide a response to Mr Rule's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
15. Given that the Ministers have since responded to Mr Rule's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr Rule's application.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Rule, in particular by failing to respond to Mr Rule's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr Rule's requirement for review, the Commissioner does not require them 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**17 May 2013**



## 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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##### 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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