

Decision Notice



Decision 218/2013 Mr Paul Hutcheon and the Scottish Ministers

Travel by Ministerial spouses

Reference No: 201301479
Decision Date: 7 October 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 28 February 2013, Mr Hutcheon made two requests to the Scottish Ministers (the Ministers), both covering a specified period of 12 months. He asked for details of every engagement and appointment a named official had undertaken with or for Moira Salmond, and for details of every journey made in a government car by the spouse of a Minister, including the First Minister's spouse. The Ministers responded by stating that no information was held. Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information not held)

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 28 February 2013, Mr Hutcheon wrote to the Ministers requesting the following information:
 - a) From 28 February 2012 to 28 February 2013, details of every engagement and appointment civil servant Lorraine Kay has undertaken with or for Moira Salmond, including the dates and purpose of each engagement/appointment;
 - b) From 28 February 2012 to 28 February 2013, details of every journey made in a government car by the spouse of a Minister, including the First Minister's spouse. The details should include the date and purpose of each journey.
2. On 30 March 2013, having received no response, Mr Hutcheon wrote to the Ministers, requesting a review in respect of that failure.
3. The Ministers notified Mr Hutcheon of the outcome of their review on 12 June 2013. They apologised for the delay in responding. For request a), the Ministers confirmed that members of the First Minister's private office undertook engagements with the First Minister, including events with Mrs Salmond when she accompanied the First Minister on official business. They stated that no further information applicable to this request was held.



4. For request b), the Ministers responded that no information specific to the request was held, but that use of the Government Car Service (GCS) was in line with the rules on Ministerial travel.
5. On 24 June 2013, Mr Hutcheon 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. Mr Hutcheon's application related only to the conclusion that no information was held, not the initial failure to respond to the request.
6. The application was validated by establishing that Mr Hutcheon made requests 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 those requests. The case was then allocated to an investigating officer.

Investigation

7. The investigating officer contacted the Ministers, notifying them that an application had been received and inviting their comments (as required by section 49(3)(a) of FOISA). They were asked to explain the steps taken to identify and locate the information requested, along with certain questions specific to the request. The Ministers provided a submission, following which the investigating officer clarified certain outstanding points with them.

Commissioner's analysis and findings

8. In coming to a decision on this matter, the Commissioner considered all relevant submissions, or parts of submissions, made to her by both Mr Hutcheon and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Section 17

9. In response to Mr Hutcheon's requests, the Ministers provided brief explanations. Basically, however, their response to each was that no information was held. Mr Hutcheon believed it should be possible for the Ministers to retrieve the information he sought.
10. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
11. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.



Request a)

12. Mr Hutcheon believed this information might be found in Ms Kay's diaries.
13. The Ministers explained that Ms Kay was the First Minister's Deputy Private Secretary, with a range of duties associated with managing the First Minister's private office and supporting the First Minister. They also explained that at some events the First Minister might be accompanied by Mrs Salmond. The Ministers confirmed that they held records regarding the events and engagements of the First Minister, but did not record the information sought in request a).
14. Regarding a diary or similar resource kept by Ms Kay, the Ministers confirmed that they had spoken to her and could confirm that she held no information applicable to the request. As they did not consider any relevant information to be held, they did not agree with Mr Hutcheon's submission that it should be possible for the Ministers to retrieve the information.
15. The Commissioner has considered all of the above carefully. In all cases, she would expect a Scottish public authority to take reasonable, proportionate steps to identify and locate any information it holds and which falls within the scope of a request under section 1(1) of FOISA. In this case, she notes that Ms Kay can, by virtue of her duties, be expected to have some dealings with Mrs Salmond in connection with official engagements. However, it appears likely from these duties that any such dealings will be incidental to support provided to the First Minister in relation to these engagements. There would appear to be no business need to record engagements or appointments involving Mrs Salmond separately, and none has been brought to the Commissioner's attention by Mr Hutcheon.
16. In all the circumstances, the Commissioner is satisfied that the Ministers took reasonable and proportionate steps to identify and locate the information covered by request a). The Commissioner therefore accepts that it was reasonable for the Ministers to conclude that they did not hold any information falling within the scope of that request.

Request b)

17. Mr Hutcheon believed the Scottish Government's car logs might contain this information.
18. The Ministers explained that all journeys made by GCS cars were recorded on the booking system under the Ministerial title of whoever had booked the car. This was used to inform the publication of information on Ministerial journeys. The Ministers stated that they did not keep a record separate from that in the booking system, and therefore had no record of the names of passengers carried in GCS cars. Ministerial private offices would record car information in their diaries, but this would simply state that the car had been booked for a particular journey to be undertaken by the Minister.



19. It was drawn to the Ministers' attention that, in responding to Mr Hutcheon, they had referred to the rules on Ministerial travel. They were asked to explain if they had any particular rule or rules in mind, relating to travel by Ministerial spouses in Ministerial cars and what information should be recorded in relation to such travel.
20. The Ministers supplied the investigating officer with a copy of the GCS Guidance, which governs the use of GCS transport, and highlighted what they considered to be the relevant passage. Section 9 on page 4 states:

Circumstances may arise in which Ministers choose to share a GCS car with someone who is not normally eligible to use the GCS (for example, their partner). There is no restriction on doing so provided the journey has as its principal purpose the performance of Ministerial duties. In circumstances where a Minister's partner's attendance is required in furtherance of the Minister's official duties GCS may provide the partner with transport for this purpose.

Having considered the GCS Guidance, the Commissioner has identified nothing else of relevance to either of Mr Hutcheon's requests.
21. Again, the Commissioner has considered all relevant submissions carefully. She would reiterate what she has said above, at paragraph 15. Having considered the GCS Guidance, she can identify no business need to record the information sought by Mr Hutcheon in request b) – again, none has been brought to her attention.
22. The Commissioner accepts that the actions taken by the Ministers in relation to request b) were reasonable and appropriate in the circumstances. Consequently, she is satisfied that it was reasonable for the Ministers to conclude that they held no information falling within the scope of that request.

DECISION

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



Appeal

Should either Mr Hutcheon 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.

Margaret Keyse
Head of Enforcement
7 October 2013



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.
- ...

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- ...