

# Decision Notice

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## Decision 028/2016: Ms Jackie Baillie MSP and the Scottish Ministers

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### Meetings with the oil and gas industry

Reference No: 201501702

Decision Date: 8 February 2016



Scottish Information  
Commissioner

## Summary

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On 11 June 2015, Ms Baillie asked the Scottish Ministers (the Ministers) about meetings with the oil and gas industry to discuss the publication of a new oil and gas bulletin.

Following a review, the Ministers informed Ms Baillie they did not hold any information which would answer her request. Ms Baillie remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the Ministers did not hold any information which would satisfy Ms Baillie's request.

## Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 11 June 2015, Ms Baillie made a request for information to the Ministers. The information requested was:
  - (i) *all diary dates for and*
  - (ii) *attendees present at*

*any meeting with representatives of the oil and gas industry to discuss the publication of a new oil and gas bulletin from 18 March 2015 to date.*
2. The Ministers responded on 9 July 2015. They told Ms Baillie that they, and Scottish Government officials, have an ongoing engagement with the North Sea oil and gas industry. They provided a list detailing some of the organisations and industry forums that the Minister for Business, Energy and Tourism had met with, or had spoken to, between 1 January 2015 and the Scottish Parliamentary recess in June 2015.
3. On 15 July 2015, Ms Baillie wrote to the Ministers requesting a review of their decision. She was unhappy that she had not been provided with the dates of, or attendees present at, these meetings. She also commented that the Ministers' response referred only to "some" of the meetings which had taken place.
4. The Ministers notified Ms Baillie of the outcome of their review on 11 August 2015. They upheld their original decision with modification. However, they recognised that they should have informed Ms Baillie, in terms of section 17(1) of FOISA (Information not held), that they did not hold the information she requested.
5. On 17 September 2015, Ms Baillie wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Ms Baillie was unhappy that she had not been provided with the information she had requested.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Ms Baillie made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
7. On 21 September 2015, the Ministers were notified in writing that Ms Baillie had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions. These focussed on the searches carried out to identify and locate any information falling within the scope of the request.

## Commissioner's analysis and findings

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

### Whether the Ministers held any information

10. Under 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.
11. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect. In this case, the Ministers notified Ms Baillie at review that they did not hold the information she had asked for.
12. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. She also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) actually held by the public authority.
13. In their submissions to the Commissioner, the Ministers maintained that they did not hold any information falling within the scope of Ms Baillie's request. They commented that the request was very specific in that it referred to meetings "to discuss the publication of the new oil and gas bulletin" and that they had been unable to identify any information falling within the scope of the request.
14. With regard to the list of organisations/forums provided with their initial response, the Ministers confirmed, at review stage, that this information fell outwith scope of the request. The list was part of a background reference document that contained limited data (including the date and the company/institution the Minister for Business, Energy and Tourism met), but it contained no information on agenda or content.

15. The Ministers explained that these meetings contained in the list were not specifically about the oil and gas bulletin, but would have covered a range of topical issues, including the outlook for the respective companies/institutions and the key issues facing the oil and gas sector as a whole. The Ministers acknowledged that it was possible that the oil and gas bulletin had been raised or discussed at these meetings, but they did not hold any information which confirmed that this was the case.
16. The Ministers provided evidence of the searches and enquiries carried out in reaching their conclusion that they did not hold the information requested.
17. The Ministers explained that searches (including an email trawl) had been conducted by the Minister for Business, Energy and Tourism's private office. These, the Ministers explained, were in addition to searches of email accounts, calendars and "my documents" by all relevant officials with an interest in the oil and gas industry. These searches identified no information within the scope of Ms Baillie's request. The Ministers provided copies of email correspondence supporting this position.
18. The Ministers described the searches conducted on its electronic records management system, using the search terms:
  - (i) "briefing"; "bulletin"
  - (ii) "meeting"; "bulletin" and
  - (iii) "meeting"; "oil".

The Ministers told the Commissioner that the results of the searches had been individually examined, but none contained any mention of the bulletin. The Ministers confirmed that these searches would cover any documents held relating to the meetings referred to in paragraph 13 above. The Ministers provided screenshots of the results of the searches as evidence that they did not hold the information requested.

19. Having considered all the relevant submissions and the terms of the request, the Commissioner is satisfied that the Ministers took adequate, proportionate steps to establish whether they held information which fell within the scope of Ms Baillie's request. She accepts that any information relevant to the request would have been identified using the searches described by the Ministers. She is therefore satisfied, on the balance of probabilities, that the Ministers do not (and did not, on receiving the request) hold the information requested, and by serving notice under section 17 at review complied with Part 1 of FOISA.

## **Commissioner's observations about handling**

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20. When it responded to the initial request, the Ministers provided Ms Baillie with a list of some of the meetings the Minister for Business, Energy and Tourism had with the oil and gas sector. It did not provide any context or explanation to the effect that this was not within the scope of her request, nor did it serve notice under section 17 of FOISA that it did not hold the information she asked for.
21. This was addressed on review.
22. While the Commissioner recognises the Ministers' good practice at review, in that they issued a modified decision, she would observe that, by not making it clear to Ms Baillie that the list was outwith the scope of her request and by not serving notice under section 17 at

the outset, the Ministers confused matters and incurred costs at review and appeal to the Commissioner that might otherwise have been avoided.

## **Decision**

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The Commissioner finds that the Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Baillie.

## **Appeal**

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Should either Ms Baillie or the Scottish Ministers wish to appeal against this decision, they have the right to 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**8 February 2016**

### 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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(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.

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#### 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.

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