

# Decision Notice

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## **Decision 105/2018: Mr Ross Greer MSP and the Scottish Ministers**

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### **State support for defence sector companies**

Reference No: 201800269

Decision Date: 11 July 2018



Scottish Information  
Commissioner

## Summary

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The Ministers were asked about state support of companies in the defence sector, including the names of companies which had received financial support and how much financial support they had received.

The Ministers initially said they did not hold any information. However, during the Commissioner's investigation, the Ministers identified, and disclosed, information falling within the scope of the request.

The Commissioner found that the Ministers had failed to respond to the request in accordance with Part 1 of FOISA, but did not require the Ministers to take any action as the information had now been disclosed.

## 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 27 November 2017, Mr Greer made a request for information to the Scottish Ministers (the Ministers). He asked for information relating to companies which receive state support in the form of financial support, graduate placements, summer placements, and specialist advice services from Scottish Enterprise (SE) and Highlands and Islands Enterprise (HIE). In particular, Mr Greer requested:
  - (i) a list of every company engaged in the defence sector having received the aforementioned support for every year since 2007/8;
  - (ii) the amount of financial support to each individual company engaged in the defence sector provided by both SE and HIE for every year since 2007/8.
2. The Ministers responded on 15 December 2017. They explained that they had searched their files, but did not hold the requested information. The Ministers advised Mr Greer to contact HIE and SE directly to request the information, and provided Mr Greer with the relevant contact details.
3. On 21 December 2017, Mr Greer wrote to the Ministers requesting a review of their decision. He stated that, when he had requested similar information for the year 2016/17, he had received a response detailing seven companies which received support totalling over £500,000. On requesting the same information for every year since 2007/08, he had been told that the Ministers did not hold the information. Mr Greer felt these responses were contradictory and found it difficult to believe that information that was available for the year 2016/17 was not available for previous years.

4. The Ministers notified Mr Greer of the outcome of their review on 23 January 2018. The Ministers concluded that their original decision should be confirmed with modification. They confirmed (in line with section 17(1) of FOISA) that they did not hold some of the information which Mr Greer had asked for, but acknowledged that the information provided in response to Mr Greer's previous request was available because it had been collected with respect to Parliamentary Question S5W-11258<sup>1</sup>, raised on 12 September 2017. The Ministers stated that this information was therefore publicly available, but offered to supply a paper copy, if required.
5. On 8 February 2018, Mr Greer applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He explained in detail why he believed that information held by the Ministers falling within his request had not been provided to him.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Greer made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. 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 including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.
8. On 13 April 2018, the Ministers explained that it had become apparent that some of the information requested by Mr Greer was held by the Ministers although not identified in the original file search. The Ministers said that, when providing information to enable the Scottish Government to respond to the written parliamentary question S5W-03736<sup>2</sup>, HIE had provided background information on support to individual businesses working with the defence industry over the period 2006/16.
9. The Ministers sent this information to Mr Greer on 7 June 2018 and apologised that it had not been identified earlier.
10. The Ministers also explained that, in line with the parliamentary question, SE had provided total figures for support to defence companies, not details of individual companies. They confirmed that they did not hold information about support provided to individual companies for the years 2006-16.

## Commissioner's analysis and findings

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

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<sup>1</sup><http://www.parliament.scot/S5ChamberOffice/WA20170920.pdf>.

<sup>2</sup><http://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-03736>

## **Section 17(1) - Notice that information is not held**

12. 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. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
13. In failing to take adequate steps to identify, locate and provide information which was covered by Mr Greer's request, the Ministers failed to comply with section 1(1) of FOISA. In the circumstances, the Ministers were incorrect to give Mr Greer notice, in terms of section 17(1) of FOISA, that they held no information falling within the scope of the request under investigation.
14. Mr Greer also asked if the Ministers held information from SE that fell within his request. The Ministers provided the Commissioner with a summary of when, and for what purpose, they had received information from SE. They explained that, in relation to SE, they held a breakdown of support to individual companies for 2016/2017 only. Parliamentary Question S5W-03736 was answered on 31 October 2016. At this time, SE provided total figures for support to defence companies from 2006/07 to 2015/16, not details of individual companies. A Parliamentary Question from Mr Greer (S5W-11258) was received almost a year later on 12 September 2017, for funding for 2016/17. At this point, SE sent through details of funding for 2016/17, which did include a breakdown of support to individual companies. This information was found when responding to a previous information request and disclosed to Mr Greer.
15. The Ministers confirmed that they do not hold a breakdown of individual company support from SE for the years 2006/07 to 2015/16 and therefore wish to rely on section 17(1) of FOISA in relation to that part of Mr Greer's request.
16. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
17. Having considered all the relevant submissions, the Commissioner accepts that the Ministers have now taken adequate and proportionate steps to establish what information they hold which falls within the scope of Mr Greer's request and is satisfied that they have now disclosed all of the information they hold to Mr Greer.
18. In reaching this conclusion, the Commissioner has taken into account that, although the initial searches by the Ministers failed to identify some information covered by the request, later searches successfully identified this information and led to further enquiries about the information provided at different dates by SE. These searches were therefore capable of locating and retrieving relevant information, and focused on the relevant business areas. The Ministers have also provided reasonable arguments to explain why they would not hold further information covered by Mr Greer's request.
19. Other Scottish public authorities may hold relevant information that falls within Mr Greer's request, for example SE. However, the question for the Commissioner is whether the Ministers held the information covered by Mr Greer's request. There is no requirement under

FOISA for the Ministers to obtain information from another public authority when responding to a request.

20. Similarly, as stated in many previous decisions, the Commissioner's remit extends only to the consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA (or with the Environmental Information (Scotland) Regulations 2004) in responding to a request. The Commissioner cannot comment on whether a public authority should retain, record or hold more information about a subject.

## Decision

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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 responding to the information request made by Mr Greer. The Ministers failed to identify the information they held which fell within Mr Greer's request, and so were wrong to give notice under section 17(1) of FOISA that they did not hold any information.

Given that the Ministers have apologised to Mr Greer and have now disclosed the information they hold to Mr Greer, the Commissioner does not require the Ministers to take any further action.

## Appeal

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Should either Mr Greer or the 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.

**Margaret Keyse**  
**Head of Enforcement**

**11 July 2018**

### 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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