

# Decision Notice 023/2020

---

## **Peter Murrell's use of Scottish Government transport**

---

**Applicant: The Applicant**

**Public authority: Scottish Ministers**

**Case Ref: 201901938**



Scottish Information  
Commissioner



## Summary

---

The Ministers were asked for information regarding Peter Murrell's (the First Minister's husband's) use of government transport and the costs of such travel.

The Ministers provided the Applicant with information regarding Mr Murrell's air travel, but they notified the Applicant that they did not hold any information regarding car use.

The Commissioner investigated, and was satisfied that the Ministers did not hold any information regarding Mr Murrell's use of government chauffeured cars.

## Relevant statutory provisions

---

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

---

1. On 5 August 2019, the Applicant made a request for information to the Ministers. The information requested was:  
*... how many times in the past year (from today's date) Mr Murrell has travelled in or on Scottish Government transport – cars, trains and planes... A total cost of Government funded air transport should also be included.*  
*Specifically, I'd like to know how many times Mr Murrell has been collected from home (with and without the First Minister)... Also, how many times has the return journey been done. Please note, this is very specific and refers to Mr Murrell's trips in Government chauffeur driven cars from the First Minister's and Mr Murrell's home to the SNP HQ or Scottish Parliament.*
2. The Ministers responded on 2 September 2019. They provided costs relating to air travel and notified the Applicant that there were no instances of Mr Murrell accompanying the First Minister by train. In relation to government car use, the Ministers gave the Applicant notice, under section 17(1) of FOISA, that they did not hold the information he had requested.
3. Later that day, the Applicant wrote to the Ministers requesting a review of their decision on the basis that he did not accept that the information was not held.
4. The Ministers notified the Applicant of the outcome of their review on 30 September 2019. They upheld their previous reliance on section 17(1) of FOISA, in relation to Mr Murrell's car use.
5. On 23 October 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Ministers' review because he did not accept that they did not hold information regarding Mr Murrell's use of government chauffeur driven cars; he argued that the information must be held.

## Investigation

---

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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. On 8 November 2019, the Ministers were notified in writing that the Applicant 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 to answer specific questions regarding their reliance on section 17(1) of FOISA.

## Commissioner's analysis and findings

---

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

### Section 17(1) - Information not held

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. 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.

#### *Submissions from the Applicant*

11. The Applicant argued that it was simply not credible that the Ministers did not hold any information regarding the number of times that Mr Murrell used a government chauffeured car to and from Bute House and the Scottish Parliament. He argued that if transport arrangements were properly managed there would be logs of starting and closing mileage, along with details of individual trips.
12. The Applicant submitted that this information should contain who was in the First Minister's car. If it does not, the Applicant argued that this is a major concern, not least for security reasons. The Applicant stated that he simply did not believe that the information was not available.

#### *Submissions from the Ministers*

13. The Ministers explained that the First Minister's diary is managed by a team of diary secretaries. When the team add a calendar entry for an engagement which will require the First Minister to be driven to it, they will also create a separate calendar entry with the subject "car" and which will include details of the start and end points of the journey, including the start and end times. The Ministers submitted that no other information is held in the "car" entry and the request is not sent to anyone – it is purely a calendar appointment.
14. The Ministers submitted that, while there is no written guidance or policy on arrangements for the First Minister's car travel, all Scottish Ministers are expected to comply with the Ministerial Code which sets out principles for travel. The Ministers noted that all other

Scottish Ministers use the Government Car Service, and they provided the Commissioner with a copy of the guidance for using that service.

15. The Ministers were asked for a step by step explanation of the process involved in arranging a government car for the First Minister and their processes for communicating (and recording) the times and locations for pick up / drop off and the number and names of passengers travelling in the car. The Commissioner asked the Ministers to explain how the chauffeur would know that they had collected everyone scheduled to be travelling with the First Minister, and whether they would know the names of any other passengers (and, if so, how would they get that information).
16. The Commissioner asked the Ministers to provide him with three real-life examples of a transport request by the First Minister along with any information that was generated as a result of such a request. The Ministers were asked about the size of car used to transport the First Minister and were asked if a larger car would be required if additional passengers would be accompanying the First Minister.
17. The Ministers were also asked specific questions about the searches they had undertaken to identify relevant information.
18. The Ministers provided detailed submissions in response to the Commissioner's questions. These submissions were candid and specific and addressed all of the points raised by the Commissioner. The Ministers have asked the Commissioner not to reproduce these submissions in his Decision Notice as they relate to the security of the First Minister. The Commissioner agreed not to reproduce the submissions but he has taken full account of their content before reaching his decision.

#### *Commissioner's conclusions*

19. As noted above, while the Commissioner has taken account of all of the submissions made by the Ministers, he is unable to reproduce them fully in this decision.
20. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Ministers took adequate, proportionate steps to establish whether they held any information that fell within the scope of the request. He is satisfied that the searches described by the Ministers would have been capable of identifying any information held and relevant to the request. He is also satisfied that the Ministers have provided sufficient explanation as to why the information is not held.
21. The Commissioner is therefore satisfied, on the balance of probabilities, that the Ministers do not (and did not, on receipt of the request) hold the information requested. He finds that the Ministers were therefore correct to give notice, in terms of section 17(1) of FOISA, that they did not hold the information requested.

## **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 request made by the Applicant.

## **Appeal**

---

Should either the Applicant 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**

**4 February 2020**

### 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.

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**