

# Decision Notice 139/2021

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## First Minister's travel

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**Applicant: The Applicant**

**Public authority: Scottish Ministers**

**Case Ref: 202001418**



## Summary

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The Ministers were asked about specific costs for the First Minister's travel. The Ministers told the Applicant they did not hold the information, and advised him to make a request for information to the Police Scotland.

The Commissioner investigated and found that the Ministers complied with FOISA in responding to the 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 7 October 2020, the Applicant made a request for information to the Scottish Ministers (the Ministers). The information requested was:  
*Was it the First Minister's choice not to live in her official residence of Bute House? [Part 1].*  
*If it was her choice, is the First Minister, Ms Nicola Sturgeon, meeting her own travel costs from her home to Edinburgh? [Part 2].*  
*If not, what has been the total cost to the government/taxpayers of her travel from her home to Edinburgh from 23 March 2020 to 29 May 2020?*
  - a. *This figure should include the cost of fuel and vehicle maintenance, and/or costs of public transport.*
  - b. *The cost and expenses for staff, including police, involved.*
  - c. *Do the vehicles remain overnight in Glasgow or return to Edinburgh, or another location not at the First Ministers home? And any costs arising from this [Part 3].*
2. The Ministers responded on 4 November 2020. They said that Bute House is the Official Residence of the First Minister (FM). They added that, in accordance with advice from Police Scotland, the FM's car travel arrangements are not disclosed and the Ministers advised the Applicant that, if he would like to request information regarding car journeys made by the FM, he should approach Police Scotland. The Ministers issued a formal refusal under section 17(1) of FOISA that the information was not held by them.
3. On 5 November 2020, the Applicant wrote to the Ministers requesting a review of their decision on the basis that he did not believe that the Ministers held no information. He explained that he did not wish security information about the FM's travel arrangements, and commented that it was difficult to accept that Police Scotland hold all this information and that the cost of the FM's travel falls within their budget. The Applicant said it was difficult to believe that the Ministers do not hold the information on who made the decision not to use Bute House for accommodation.

4. The Ministers notified the Applicant of the outcome of their review on 25 November 2020. Their review confirmed their original decision, with modifications. The Ministers said that the Applicant should have been provided with a fuller answer to Part 1 of his request and the Ministers "...can confirm that the First Minister took the decision not to stay at Bute House during the current Covid-19 pandemic in order to lessen the pressure on staff resources." The Ministers decided that they were correct not to disclose details of the FM's car travel arrangements, and advised again that any requests for information about the FM's car journeys should be directed to Police Scotland. Contact details for Police Scotland were supplied to the Applicant by the Ministers. The Ministers confirmed that they did not have the information requested.
5. On 27 November 2020, the Applicant wrote to the Commissioner, applying 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 no information was held.

## **Investigation**

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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. 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. These related to how the Ministers had established they did not hold any information held falling within the terms of the Applicant's request.

## **Commissioner's analysis and findings**

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8. In coming to a decision on this matter, the Commissioner considered all 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 1 - General entitlement**

9. 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. 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.
10. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not usually require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in a recorded form (e.g. from a person's memory).

### **Part 1 of the request**

11. Part 1 of the request was "Was it the FM's choice not to live in her official residence of Bute House?"
12. The Ministers' review found that they should have provided a fuller answer to this question and they confirmed that the FM took the decision not to stay at Bute House during the

current Covid-19 pandemic in order to lessen the pressure on staff resources. The Ministers were invited to explain their review.

13. The Ministers replied that they interpreted Part 1 of the request to be for recorded information which confirmed who made the decision for the FM not to reside in her official residence of Bute House. As at the date the request was received, the Ministers said that they did not hold any recorded information that would confirm this. However, by the time of their review, it had been confirmed in response to a question raised during the FM's daily briefing explaining that the FM had chosen not to reside at Bute House during the pandemic.
14. Consequently, the review response issued on 15 November 2020 should have confirmed that they did not hold any relevant information at the time of the request - and therefore that section 17(1) applied – but, as the information was subsequently held, they were providing confirmation that the FM took the decision not to stay at Bute House. As their review informed the Applicant of this, the Ministers considered that this response confirmed that it was the FM's choice not to live in her official residence of Bute House. They provided the relevant information to the Applicant to assist him.
15. The Ministers clarified that their review had provided this information to the Applicant in good faith, based on their recollection (by the official involved) of the situation at the time. However, the Ministers stated that they were unable to confirm when it had been confirmed in response to a question raised during a FM's daily briefing, and therefore were unable to provide a copy of the information held to corroborate this.
16. The Commissioner accepts that the information provided to the Applicant by the Ministers in their review answers the first part of the Applicant's request and he accepts the explanation given by the Ministers and that no recorded information was held at the time of the request.

#### Parts 2 and 3 of the request

17. Part 2 of the request was: "If it was her choice, is the FM, Ms Nicola Sturgeon, meeting her own travel costs from her home to Edinburgh?". Part 3 of the request was for the total cost to the government/taxpayers of her (the FM's) travel from her home to Edinburgh from 23 March 2020 to 29 May 2020 with any figure to include the cost of fuel and vehicle maintenance, and/or costs of public transport; the cost and expenses for staff, including police, involved; and "whether the vehicles remain overnight in Glasgow or return to Edinburgh, or another location not at the FM's home" and any costs arising from this.
18. The Ministers' review decided that they had been correct not to disclose details of the FM's car travel arrangements, and advised that any requests for such information should be directed to Police Scotland. The Ministers' review and submissions to the Commissioner confirmed that they did not have the information requested. The Ministers were invited to explain their review outcome.
19. They confirmed that they held no information. In response to being asked how they established that no information was held, the Ministers explained that the official dealing with the initial request worked within the People and Logistics Unit within the Ministerial Private Offices, and had an in-depth working knowledge how the FM's car travel was arranged and administered. Given the small number of officials involved in FM car travel arrangements and their knowledge of how this is administered, the Ministers did not consider that any searches were appropriate for this part of the request.
20. The Ministers explained that, beyond the entries in the diary, which purely recorded the start and end time of the journey and a simple description, the Ministers held no information about

the journeys made by the FM. Additionally, in line with advice from Police Scotland, the Ministers do not publish details of the FM's car travel arrangements. The statement "in accordance with advice from Police Scotland the FM's car travel arrangements are not published" has been included in the FM's entry in the monthly proactive publication of ministerial engagements, overseas travel, car journeys, domestic travel and gifts since May 2017.

21. The Ministers explained that Police Scotland were reimbursed for associated costs with the FM's security through their core grant. Accordingly, costs related to individual journeys are not itemised.
22. 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.
23. Having considered all the relevant submissions, the Commissioner is satisfied that the Ministers took adequate and proportionate steps to establish whether they held recorded information falling within the scope of the Applicant's request. The staff involved in assessing what information was held by the authority had experience and knowledge of the subject matter of the request, reducing the likelihood of error and misunderstanding in locating the information requested.
24. The Commissioner accepts it is reasonable to assume that the FM's travel details will involve a degree of security. He also accepts that the operation of the Police Scotland team is paid through the core grant - the core grant is paid as a block amount, which is managed and monitored by Police Scotland. Whilst the grant will include an amount of funding allocated to the Police Scotland team to protect the FM, it is not the sole purpose of the grant; therefore, as the grant is paid as a block amount and managed by Police Scotland, the Ministers did not hold any information confirming or relating to the total cost of the FM's travel.
25. In all the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Ministers held no recorded information that fell within the terms of the Applicant's request. He accepts the explanations given by the Ministers about how the FM's travel is organised and financed (namely as part of core grant). He notes that the Applicant has been advised that any requests relating to the FM's car journeys should be directed to Police Scotland.

## Decision

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

## **Appeal**

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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**

**27 September 2021**

## Appendix 1: Relevant statutory provisions

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### 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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