

# Decision Notice

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## Decision 028/2019: Mr E and the Scottish Ministers

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### Specified file on a project funded by Chief Scientist Office

Reference No: 201801895

Decision Date: 4 March 2019



Scottish Information  
Commissioner

## Summary

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The Ministers were asked for a specified file on a project funded by the Chief Scientist Office. The Ministers responded that the information was available on the Chief Scientist Office website.

The Commissioner investigated and found that all the information was not reasonably obtainable other than by requesting it under FOISA. However, as the Ministers had provided the information to the requester during the investigation, the Commissioner did not require them to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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 July 2018, Mr E made a request for information to the Ministers. The information he requested included the following:  
*“Last year you sent me details of the projects you have funded over the last several years. You sent me 6 files in all. I have attached the last one of the 6 “Data 6”. Please could you send me a new file Data 7 that updates the information I have to the latest information that you have available, so it should include the latest project that you have funded.”*
2. The Ministers responded on 9 August 2018 and disclosed information relating to the other parts of Mr E’s request. In relation to his request for the new file “Data 7”, they relied on section 25(1) of FOISA on the basis that the information was available on the Chief Scientist Office website<sup>1</sup>.
3. On 9 August 2018, Mr E wrote to the Ministers requesting a review of their decision as they had not provided information in the format he had requested. Mr E explained that, for example, the information on the website<sup>2</sup> did not show the duration of the project. He asked that the project information be given to him in the same format that had previously been provided (i.e. the format used for the file “Data 6”).
4. The Ministers notified Mr E of the outcome of their review on 9 October 2018. They explained that the information in the files “Data 1” – “Data 6” “was provided outwith our requirements to provide information under FOISA”. This information was provided in .csv format at Mr E’s request and in a bespoke format as, at that time, the Chief Scientist Office was undertaking a project to make the information pro-actively published on its website more accessible. That project had now been completed. The Ministers also said that the duration of a proposal “is

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<sup>1</sup> <https://www.cso.scot.nhs.uk/outputs/cso-funded-research/>

<sup>2</sup> <https://www.sco.scot.nhs.uk/outputs/cso-funded-research/tcs18/>

not proactively published as relevant start and end dates are indicative only” and, for funded proposals that have commenced, a firm end-date may not be known.

5. On 5 November 2018, Mr E applied to the Commissioner for a decision in terms of section 47(1) of FOISA as he was dissatisfied with the outcome of the Ministers’ review. He believed they should be able to send him the information in the format he requested, as well as information about the project duration.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Mr E 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. On 14 January 2019, the Ministers were invited to comment on this application and answer specific questions.
8. On 17 January 2019, the Ministers disclosed further information to Mr E: they provided two .csv files (Data 07), which contained the information Mr E requested in the format he requested.
9. Mr E was then asked by the Commissioner (22 January and 6 February 2019) whether the new response from the Ministers was sufficient, and whether he had any concerns. Mr E did not respond.
10. On 22 February 2019, the Ministers were given the opportunity to provide comments on Mr E’s application, in terms of section 49(3)(a) of FOISA. The Ministers responded on 27 February 2019.

## **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 E and the Ministers. He is satisfied that no matter of relevance has been overlooked.
12. The Ministers’ submission to the Commissioner explained that, after reconsidering the information they held, they had concluded that they were not entitled to respond under section 25(1) to part 1 of Mr E’s request. The Ministers confirmed that they had now provided Mr E with all the information he had requested, in the format requested, and that they wished to withdraw reliance on section 25(1) of FOISA in relation to part 1 of Mr E’s request.
13. The Ministers explained that the “Data 6” file previously provided to Mr E did not specifically include the duration of the project, although it provided the proposed start date and the proposed finish date of each project. Where Mr E had stated that the website did not show the duration of the project (9 August 2018), the Ministers had interpreted this to mean the proposed start and end dates for each project.
14. The Ministers accepted that their response to Mr E on 9 August 2018 was incorrect in so-much as it stated that “all” information was available from the Chief Scientist Office website. Additionally, although their review response of 9 October provided clarification on the limitations of the proposed start and end dates, the Ministers now recognised that the

proposed start and end dates were not published on the website and therefore they were not entitled to rely on section 25(1) of FOISA for this aspect of Mr E's request.

15. The Ministers also accepted that in simply providing a link to the information on the Chief Scientist Office website, they did not provide Mr E with information in the format he requested.
16. The Ministers apologised for this error and for the delay in providing the information. They confirmed that they had now provided Mr E with a copy of a .csv file entitled Data 7, which is in the same format as the Data 6 csv file, as requested. This included the proposed start and end dates for each project. The Ministers concluded that they were "no longer relying on any provision of FOISA to withhold information".
17. Given the above, the Commissioner concludes, as a matter of fact, that information requested by Mr E was not reasonably obtainable within the meaning of section 25(1) of FOISA. Accordingly, the Ministers failed to comply fully with Part 1 of FOISA in their response to part of Mr E's request for "a new file Data 7."
18. Given the Ministers have now disclosed information to Mr E, the Commissioner requires no action from the Ministers in respect of the dissatisfaction expressed in Mr E's application.

## Decision

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The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to part of the information request made by Mr E.

Given that the Ministers have now provided information to Mr E, the Commissioner does not require them to take any action in respect of this failure in response to Mr E's application.

## Appeal

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Should either Mr E 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 March 2019**

### 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

#### 25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

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