



Scottish Information
Commissioner

**Decision 058/2005 Mr Stewart Mackenzie and the Scottish
Parliamentary Corporate Body**

*Request for all information held by the Chief Executive of the Scottish
Parliament and his office which relates to the applicant*

**Applicant: Mr Stewart Mackenzie
Authority: The Scottish Parliamentary Corporate Body
Case No: 200502143
Decision Date: 28 November 2005**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 058/2005 Mr Stewart Mackenzie and the Scottish Parliamentary Corporate Body

Request for all information held by the Chief Executive of the Scottish Parliament and his office which relates to Mr Mackenzie – information supplied but the applicant contended that other information he required had also been withheld – the Chief Executive’s Office of the Scottish Parliamentary Corporate Body stated that it did not hold the information sought – section 17 of the Freedom of Information (Scotland) Act 2002 – information not held.

Facts

Mr Mackenzie wrote to Mr Paul Grice, Chief Executive of the Scottish Parliamentary Corporate Body (the SPCB), on 24 April 2005. In his letter, Mr Mackenzie asked for all of the information that related to him which was held by Mr Grice and his office. The SPCB supplied Mr Mackenzie with a number of documents, but Mr Mackenzie complained that he had not been provided with all of the information that he had requested. The SPCB carried out a review and informed Mr Mackenzie that all of the information he had requested had in fact been provided. He was also invited to submit a request for the information he sought which could be held in other offices within the Scottish Parliament. The SPCB offered to progress the request. Mr Mackenzie declined to submit such a request, maintaining that he had not been supplied with all of the information he had requested from the Chief Executive’s Office. He was dissatisfied with the SPCB’s response and applied to the Scottish Information Commissioner for a decision.

Outcome

The Commissioner found that the SPCB had complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner was satisfied that the SPCB had carried out all reasonable steps to determine that it did not hold the information requested by Mr Mackenzie under section 1 of FOISA.



Appeal

Should Mr Mackenzie or the SPCB wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. On 24 April 2005, Mr Mackenzie sent a written request for information to Mr Paul Grice, Chief Executive of the Scottish Parliament. In his letter, Mr Mackenzie requested “all of the information held by you and your office, which relates to myself, and includes information by way of emails, minutes of meetings, internal memorandums [sic], and within correspondence.” In subsequent letters and phone calls, Mr Mackenzie made it clear that he believed the information he sought was held by the Chief Executive and his office. As a consequence of this, and in line with his wishes, the request was restricted to that particular office within the SPCB.
2. Mr Mackenzie’s request was acknowledged by the SPCB on 3 May 2005, and a full response was issued to him on 19 May 2005. The SPCB provided Mr Mackenzie with a number of documents and informed him that the only piece of information that had been withheld was the name and e-mail address of a third party mentioned in one of the documents. This was held to have been exempt under section 38(1)(b) of FOISA, on the basis that the name and e-mail address constituted personal information of a third party. It was stated that disclosure of such information would be unfair to the third party involved.
3. Mr Mackenzie was unhappy with this response and wrote to the SPCB on 22 May 2005, requesting a review. In his letter he complained that he had only been provided with a limited amount of information. He maintained that the Chief Executive’s Office of the SPCB must hold internal parliamentary memoranda which relate to an investigation carried out by the Chief Executive into the editing of a submission made by Mr Mackenzie to a parliamentary committee. Mr Mackenzie did not question the use of the section 38 exemption.



4. The SPCB responded to Mr Mackenzie's request for review on 6 June 2005. It concluded that its original response to Mr Mackenzie's request should be upheld. The letter also highlighted the possibility that the information sought by Mr Mackenzie might be located outwith the office of the Chief Executive. Mr Mackenzie was invited to specify the particular information that he wished to receive which could be held in other offices within the Scottish Parliament. The Chief Executive's office offered to progress such a request.
5. Mr Mackenzie declined to submit another request to the Scottish Parliament and he contacted my Office on 23 June 2005, requesting an investigation into the matter. Mr Mackenzie maintained that further information concerning the actions of the Chief Executive in relation to Mr Mackenzie's submission to a Justice Committee is held by the Chief Executive's Office but has not been disclosed.
6. The case was then allocated to an investigating officer.

The Investigation

7. Mr Mackenzie's appeal was validated by establishing that he had made a written request for information to a Scottish public authority, and had appealed to me only after requesting that the authority review its response to his request.
8. The investigating officer contacted the SPCB on 1 July 2005, giving notice that an appeal had been received and that an investigation into the matter had begun. The SPCB was asked to comment on the issues raised by Mr Mackenzie's case and to provide supporting documentation for the purposes of the investigation.
9. In particular, the SPCB was asked to specify the steps it had taken to determine whether or not the Chief Executive's Office held any other information that was relevant to Mr Mackenzie's request. The SPCB was also asked to provide information about how the review was carried out and for copies of any internal correspondence relating to the consideration of Mr Mackenzie's request.
10. The SPCB responded on 15 July 2005, and provided the requested documentation which enabled the investigation to proceed.



The Commissioner's Analysis and Findings

11. It should be noted from the outset that where an applicant makes a request for information held by a public authority that relates to the applicant, this will in most cases be a request for personal information which should be considered under the provisions of the DPA. Section 38(1)(a) of FOISA states that information is exempt information if it constitutes personal data of which the applicant is the data subject.
12. The term "personal data" is defined in section 1(1) of the DPA as:

"data which relate to a living individual who can be identified:

 - a) from those data, or
 - b) from those data and from other information which is in the possession of or is likely to come into the possession of the data controller..."
13. The definition is subject to the interpretation contained in *Durant v Financial Services Authority* [2003] EWCA Civ 1746. In this decision, the Court of Appeal held that if information is to be viewed as personal data, the information has to be biographical in a significant sense, i.e. go beyond the recording of the individual's involvement in a matter or event that has no personal connotations. The individual also has to be the focus of the information, rather than some other person with whom that individual may have been involved. The Court of Appeal summarised these two aspects as information affecting a person's privacy whether in his personal or family life, business or professional capacity.
14. In my view, Mr Mackenzie's original request appeared to constitute a request for personal information and the SPCB could have considered the request as being exempt by virtue of section 38(1)(a) of FOISA. However, it was not until Mr Mackenzie subsequently clarified the scope of his request, when he submitted a request for review to the SPCB on 22 May 2005, that the nature of the information he required became clear. In that letter Mr Mackenzie referred to a submission he had made to the Justice 1 Committee on 12 August 2001, in relation to their inquiry into the regulation of the legal profession. Mr Mackenzie's letter indicated that he was actually seeking information that related to an investigation he believed had been carried out on the orders of the Chief Executive into the editing of his submission to the Committee. By redefining the scope of his request, Mr Mackenzie's request could now be perceived as a request for any correspondence that dealt with the way in which the Chief Executive's investigation was carried out rather than a general request for information that related to him.



15. In this instance, due to the nature of the information held by the SPCB, it was decided that Mr Mackenzie's request could be dealt with under FOISA since the information held all related to the submission Mr Mackenzie had made to the Justice 1 Committee and that Mr Mackenzie was not the focus of the information.
16. Mr Mackenzie contacted the Chief Executive's Office of the SPCB by telephone on 9 June 2005. He restated his claim that more information was held by the Chief Executive's Office which had not been provided to him. The SPCB's Information Access Manager advised Mr Mackenzie that the information he sought may be available in another office within the Scottish Parliament and he was invited to submit a new request that would widen the scope of his original request to cover other offices within the Scottish Parliament. However, he declined to do so. Instead, according to a letter from the SPCB dated 16 September 2005, Mr Mackenzie was adamant that he wanted information held purely by the Clerk/Chief Executive and his office. This was confirmed in a number of phone calls between the investigating officer and Mr Mackenzie during the course of the investigation. Mr Mackenzie has continued to assert that a paper trail exists within the Chief Executive's office which he has not been provided with.
17. The investigating officer asked the SPCB to supply details of how the review was carried out. A review panel was convened by the SPCB on 2 June 2005. The panel consisted of the Information Access Manager, two members of the Senior Managers Network, together with a member of the Senior Management Team. The FOI Action Officer from the Clerk/Chief Executive's Office was also present at the review meeting to provide background information about the handling of the initial request.
18. The SPCB also provided details of how the search for information relating to Mr Mackenzie's request was carried out. The day after receiving Mr Mackenzie's initial request the Chief Executive's Office of the SPCB initiated a comprehensive search throughout the department of all e-mails, hard copy files and archives.
19. On 5 October 2005, the investigating officer sent the SPCB an e-mail stating that he had discussed the case with Mr Mackenzie, who insists that there must be some documentation held by the Chief Executive of the Scottish Parliament, that concerns an investigation which was instigated by him into the editing of Mr Mackenzie's submission to a Justice 1 Committee inquiry into the regulation of the legal profession. It was also stated that Mr Mackenzie contended that written instructions must have been issued by the Chief Executive in order to carry out the investigation since, according to Mr Mackenzie, that is how business is normally conducted within Scottish Parliament departments and a paper trail must exist in relation to this.



20. The Investigating Officer asked the SPCB for details of how the manual search of documents was carried out, including whether all computers within the department been searched and, if so, what search terms were used in the search and what period the search covered, whether all personal e-mail inboxes, sent items, shared e-mail boxes, archives etc were included in the search, and whether any paper trail was held by any other department within the Scottish Parliament.
21. In response to the Investigating Officer's e-mail and a subsequent telephone conversation in which the working procedures of the Chief Executive were discussed, it was agreed that the SPCB would provide details of how the Chief Executive operates. This would explain why such information as that requested by Mr Mackenzie was not held by the Chief Executive and his Office.
22. In a letter dated 17 October 2005, the SPCB provided details of how the Chief Executive operates by delegating work to his Directorates, including the Directorate of Clerking and Reporting. Other means of delegation also exist, such as at meetings of the Directors' Group or the Senior Management Team, or through memos and e-mails.
23. The Chief Executive holds regular (normally fortnightly) round up meetings with the Director of Clerking and Reporting. At these meetings, matters to be undertaken by the Committee Office, the Chamber Office or the Official Report are delegated to the Director as appropriate. There is a rolling agenda which is updated as matters are raised and delegated. As this agenda is updated after each meeting, it was not possible for the Chief Executive's Office to determine the date of the meeting when the matter involving Mr Mackenzie was delegated to the Director to handle.
24. However, the SPCB stated that it is likely that the matter would have been delegated (via the Director at such a meeting) to the relevant Justice Committee clerk. It may therefore be the case that the Office of the Justice Committee could hold further information that relates to Mr Mackenzie's submission. That being the case, Mr Mackenzie would be advised to submit a request for information to the Office of the Justice Committee in the Scottish Parliament, clearly setting out the information that he requires.



25. I have been assured by the SPCB that all of the information it holds in relation to Mr Mackenzie's request has in fact been released to Mr Mackenzie. In a letter to my Office, dated 17 October 2005, the Information Access Manager of the SPCB stated that the information that Mr Mackenzie claims he has not been provided with has never in fact been held by the Office of the Chief Executive. On the basis of the evidence of the comprehensive searches that have been carried out by the SPCB and in light of their description of how the Chief Executive operates within the Scottish Parliament, I am satisfied with the assurances given by the SPCB and consequently I consider that Mr Mackenzie's request has been dealt with in accordance with Part 1 of FOISA.

Decision

I find that the Scottish Parliamentary Corporate Body dealt with Mr Mackenzie's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Kevin Dunion
Scottish Information Commissioner
28 November 2005