

# Decision Notice



Decision 066/2012 Mr David Rule and the Scottish Ministers

Kevin Pringle's engagements

Reference No: 201102128  
Decision Date: 5 April 2012

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

**Margaret Keyse**

Acting Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr David Rule requested from the Scottish Ministers (the Ministers) Kevin Pringle's engagements from 1 January 2009. The Ministers did not respond to his request or subsequent request for review. Following a decision from the Commissioner, the Ministers advised Mr Rule that they did not hold the information he had requested. Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr Rule's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner found that the Ministers' interpretation of Mr Rule's request was too narrow.

The Commissioner therefore required the Ministers to conduct a further search, taking account of his broader interpretation of "engagements", and to respond to Mr Rule in terms of FOISA by 22 May 2012.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Information not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

## Background

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1. On 25 July 2011, Mr Rule wrote to the Ministers, asking to be provided with the engagements of Kevin Pringle, a special adviser, from 1 January 2009 to the present day.
2. On 2 September 2011, having received no response to his request, Mr Rule wrote to the Ministers requesting a review of their failure to reach a decision.



3. Mr Rule did not receive a response to his requirement for review and, on 6 October 2011, wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. Following this application, which led to *Decision 224/2011 Mr David Rule and the Scottish Ministers*,<sup>1</sup> the Ministers carried out a review and notified Mr Rule of the outcome of their review on 10 November 2011. They apologised for the delay in replying and for their failure to respond to Mr Rule's request. The Ministers advised Mr Rule that they had now completed a search of their paper and electronic records, and that they did not hold the information he had requested. The Ministers commented that Mr Pringle does not carry out public engagements, but does, occasionally, support Ministers at external events.
5. Mr Rule was informed by the Ministers that information about Ministers' engagements, including those of the First Minister, was proactively published in arrears by the Scottish Government. The Ministers explained that information about Ministers' engagements from 31 May 2011 to the date of Mr Rule's request was being collated as part of a wider proactive publication exercise, and would be available on the Scottish Government website shortly. A link was provided to published information.
6. On 14 November 2011, Mr Rule wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Rule had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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8. The investigating officer contacted the Ministers on 24 November 2011, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions.
9. In his application, Mr Rule commented that, while the response from the Ministers interpreted "engagements" as meaning "public engagements", he did not think that an engagement is necessarily public. He stated that he had been informed in a telephone conversation with a member of the Ministers' staff that, while Mr Pringle does not carry out public engagements, he does have a schedule which is a record of engagements in the wider sense of the word. Mr Rule believed such a schedule would contain the information he had requested.

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<sup>1</sup> [http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2011/201101898\\_201101899.asp](http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2011/201101898_201101899.asp)



10. The Ministers were therefore asked about their interpretation of “engagement” and whether they held a schedule which was a record of Mr Pringle’s engagements (using a wider interpretation than the one they had used).
11. The Ministers responded on 6 January 2012. With reference to the interpretation of “engagement”, the Ministers commented that Mr Rule’s request had been submitted at the same time as another request for the First Minister’s engagements. It had therefore been assumed that both requests sought the same type of information. They commented that, while the First Minister undertakes “official engagements”, Mr Pringle does not; Mr Pringle, as a special adviser, has duties and supports the Ministers as required, but the Ministers do not consider these tasks to be “engagements.”
12. The Ministers confirmed that they publish the “engagements” of the First Minister on a regular basis (and that Mr Rule is aware of this fact due to a previous request), but, as Mr Pringle does not undertake “engagements”, the Ministers do not hold any information falling within the scope of his request.
13. They considered that Mr Rule’s representation of his telephone conversation with a member of the Ministers’ staff was incorrect. The Ministers maintained that the official in question had not said to Mr Rule that Mr Pringle had a schedule and that he did not know for how long it was kept, but rather that the official had told Mr Rule that Mr Pringle did not undertake public engagements and, as such, no information was held in relation to his request.
14. The Ministers explained that the information Mr Rule referred to in his application is not held in the sense of a diary, but that Mr Pringle’s work pattern was similar week by week, and that the official in question had offered to explain this in writing to Mr Rule. As a result, the information referred to during the telephone conversation related to the general working pattern for a special adviser, not to a written record. The Ministers stated that Mr Rule’s view that there was a document that could be released was incorrect, and that they do not hold a schedule of engagements for Mr Pringle now or at the time of Mr Rule’s request.
15. The submissions received from both the Ministers and Mr Rule will be considered fully in the Commissioner’s analysis and findings below.

## **Commissioner’s analysis and findings**

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16. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both the Ministers and Mr Rule and is satisfied that no matter of relevance has been overlooked.



17. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is the recorded information held at the time the request is received. Where a Scottish public authority receives a request for information which it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.
18. The Ministers had responded at review that they held no information that fell within Mr Rule's request. In respect of this, Mr Rule submitted that the Ministers had interpreted "engagements" to mean "public engagements", but he did not think that an engagement was necessarily public.
19. The Commissioner must therefore consider whether the Ministers' interpretation of Mr Rule's request was reasonable in the circumstances, and whether the Ministers held any information that fell within the terms of the request (however interpreted).
20. The Ministers were asked by the Commissioner about their interpretation of the request. They explained that Mr Rule had submitted a similar request for the First Minister's engagements at the same time, and it was assumed that the same sort of information was being sought in each case, and it was reasonable to assume that Mr Rule expected both requests to be interpreted in the same way.
21. The Ministers also stated that they would generally interpret "engagements" as being public, as opposed to describing internal meetings. They regarded engagements as referring to external meetings, visits, dinners, media interviews, meetings held in either a Scottish Government building or in the Scottish Parliament with an external stakeholder e.g. COSLA, Media representatives, Business leaders, Foreign dignitaries etc. They explained that this was the criteria they used for establishing what should be published in the Ministerial Engagements section of the Scottish Government website.
22. For information requests, generally the words used in the request should be given their plain, ordinary meaning. In this instance, the words of Mr Rule's request appear not to be used in any technical or legal sense. The Commissioner would therefore expect the Ministers to interpret the request using this ordinary meaning. Does the ordinary meaning of "engagements" denote a public aspect?
23. The word "engagement" can be taken to mean an arrangement to do something or go somewhere at a fixed time. The Commissioner is of the view that this is the ordinary meaning of the word. In ordinary language, "engagement" may be qualified so that the type of engagement can be specified: there can be reference to speaking engagements, public engagements, private engagements, ministerial engagements, etc. This ordinary use of language does not suggest that an engagement must necessarily be public.



24. The Ministers referred to Ministerial engagements published on their website<sup>2</sup>. These include meetings, receptions, interviews, performances, events, etc. The Commissioner acknowledges that these are indeed engagements. The Commissioner cannot accept, however, that the Ministers' publication of these engagements, and description of them as engagements, is conclusive of the meaning of the word used in Mr Rule's request. Instead it shows that the Ministers have chosen to disclose certain information about which there is a public interest, and have categorised that information rightly as engagements.
25. As noted above, the Ministers also referred to the similarity of language in another request made by Mr Rule for the First Minister's engagements as evidence of the meaning of the request. The Commissioner is not fully convinced by this argument. Where a requester uses the same word in requests, the Commissioner acknowledges that, in some circumstances, it may be reasonable to interpret that word in a similar fashion. However, in this instance, the engagements that a person has may be affected by the position or office they hold and the engagements of a Minister, especially the First Minister, would be different from that of an official, or someone involved in a less public-facing role.
26. The Ministers commented that, on the Commissioner's website, Events and Engagements were published, and these did not include internal meetings or provide a copy of a diary. The Ministers asked the Commissioner to justify why the Ministers should develop a different interpretation with regard only to Mr Rule's request for Mr Pringle's engagements.
27. In response, the Commissioner considers the word has to be taken in context, as noted above. Under the heading "Diary" on the Commissioner's website, it is made clear that the "Diary" contains a record of events organised by the Commissioner and her staff, or attended by the Commissioner and her staff, organised by others. It is also made clear that the "engagements" which are published are "speaking engagements". If the Commissioner were to receive an information request for "engagements" the request would not be defined as narrowly as it is on her website.
28. To conclude, despite the similarity in the word used with that in another request, the Commissioner cannot accept that there is any reason for limiting the definition to public engagements and to interpret Mr Rule's request as seeking only public engagements. The Commissioner is of the view that this was an unreasonably narrow interpretation of Mr Rule's request.
29. The next question is, therefore, what information was held by the Ministers at the time of the request, and, if the interpretation of the request suggested by Mr Rule, and accepted by the Commissioner, means that information is held which falls within the terms of the request.
30. The Ministers were asked about the recorded information actually held in respect of Mr Pringle's work: that is, recorded information about meetings or appointments or in the sense having to do something or go somewhere at a fixed time for the period in question. The Ministers were asked whether any diary was held, either hard copy or electronic, that would record any appointment Mr Pringle is required to keep in carrying out his duties.

<sup>2</sup> <http://www.scotland.gov.uk/About/14944/Events-Engagements/MinisterialEngagements/201112>





31. The Ministers responded that Mr Pringle will have an electronic diary as a daily reminder of meetings, things to discuss with officials or Ministers, etc. However, the Ministers explained that electronic diaries are routinely cleared to free memory space and any information held on events or engagements, as they interpreted the word, would be only held in the public record if there were briefings, notes, minutes, press notices, arrangements with regard to a particular event or engagement.
32. The Ministers were asked to detail the searches conducted and the personnel consulted to assess whether any information was held that fell within the terms of the request. They responded that Mr Pringle was consulted as the person responsible for attending and recording details of any “engagements.” The Ministers commented that, as Mr Rule was an experienced requester, they would have assumed that if he had wanted a copy of Mr Pringle’s diary for the period he would have specifically stated that he wanted a copy of Mr Pringle’s diary.
33. As the Commissioner has stated previously, the standard of proof to apply in determining whether a public authority holds the requested information is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality and results of the searches carried out by the public authority. She will also consider, where appropriate, any other reason offered by the public authority to explain why it has concluded that the information is not held
34. The Commissioner does not accept, on balance of probabilities, that Mr Pringle did not have any “engagements” in the ordinary sense of the word for the period in question. It is difficult to accept that the need to be in a certain place for a certain event, albeit that that it may be a routine event, would not technically be an engagement and would not have been recorded and consequently fall, in the strict sense, within the terms of Mr Rule’s request. The Commissioner notes, however, that it is possible that any diary held may have been cleared by now.
35. The Commissioner therefore requires the Ministers to conduct further searches in accordance with an interpretation of engagements that does not restrict the meaning to public engagements and, as a result of those searches, either to advise Mr Rule, in terms of section 17 of FOISA, that they do not hold any recorded information in the light of the revised interpretation, or otherwise to respond to Mr Rule in terms of Part 1 of FOISA.



## **DECISION**

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 Rule.

The Commissioner considers that the Ministers' interpretation of Mr Rule's request was unreasonably narrow. The Commissioner therefore requires the Ministers to conduct a further search taking account of the broader interpretation of the word, and to respond to Mr Rule in terms of FOISA by 22 May 2012.

## **Appeal**

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Should either Mr Rule or the Scottish Ministers (the Ministers) wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Acting Scottish Information Commissioner**  
**5 April 2012**





## Appendix

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### Relevant statutory provisions

#### 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.

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