

# Decision Notice



Decision 082/2010 David Rule and the Scottish Ministers

Failure to respond to request within the required timescale

Reference No: 200901765

Decision Date: 3 June 2010

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**Kevin Dunion**

Scottish Information Commissioner

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Doubledykes Road  
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## Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Rule.

## Background

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1. On 15 July 2009, Mr Rule wrote to the Ministers requesting all correspondence between the Scottish Government and a number of named individuals and all documents held by the Scottish Government making reference to the same named individuals. In order to limit the costs of responding to his request, Mr Rule indicated that he wished the searches to locate the specified information to be restricted to include only specified locations.
2. As the Ministers had not responded to his request for information, Mr Rule requested a review of their failure to respond on 3 September 2009.
3. On 17 September 2009, the Ministers acknowledged Mr Rule's correspondence and confirmed that they would carry out a review of their failure to respond.
4. On 1 October 2009, the Ministers wrote to Mr Rule notifying him of the outcome of their review and providing a substantive response to his request for information.
5. On 8 October 2009, Mr Rule wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to respond to his request for information within the timescales laid down in FOISA and applying for a decision in terms of section 47(1) of FOISA.
6. 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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7. On 9 December 2009, the Ministers were notified in writing that an application had been received from Mr Rule and were invited to comment on the application as required by section 49(3)(a) of FOISA. The Ministers were provided with a copy of Mr Rule's application.
8. The Ministers responded on 21 December 2009, confirming that they had received Mr Rule's request. The Ministers explained that this had unfortunately been passed to the wrong work area and no response had been issued within the deadline as the area actually responsible was not aware that the request existed.
9. The Ministers explained that, once Mr Rule's review request had been received, a search was undertaken to discover what had happened to the original request and the oversight was discovered. A response was then provided to Mr Rule as quickly as possible thereafter.
10. However, the Ministers submitted also that, having considered the Court of Session ruling in the case of *Glasgow City Council v Scottish Information Commissioner* (issued on 30 September 2009) (the Court of Session Opinion)<sup>1</sup>, they now regarded Mr Rule's information request to be invalid.
11. Further submissions with respect to the validity of this request were received from the Ministers on 29 December 2009 and 12 February 2010. (The Ministers' arguments on validity are addressed in more detail below.)

## Commissioner's analysis and findings

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### Validity of the request

12. As noted above, the Ministers indicated during the investigation that they considered Mr Rule's information request to be invalid. This was on the basis of the Ministers' interpretation of the Court of Session Opinion referred to in paragraph 10.
13. The Ministers maintained the Mr Rule had not described the information sought as required under section 8(1)(c) of FOISA, characterising the request as broadly framed and unfocused. They noted that the request was referred to 'correspondence between A and B', and categories of documents (those referring to particular individuals). In the Minister's view the request did nothing more than indicate where the information Mr Rule might be interested in might be found, which could not be equated with describing the information requested.

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<sup>1</sup> <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



14. The Commissioner has considered Mr Rule's request in the light of the Ministers' submissions and the Court of Session Opinion. He has also referred to the guidance which he has subsequently issued on the validity of requests, in the light of the Court of Session Opinion<sup>2</sup>.
15. He notes that the statutory requirement, under section 8(1)(c) of FOISA, is confined to a description of the information requested. He takes the view that the purpose of the description is to allow the public authority to identify and locate the information and that the purpose of the reference in FOISA to "information" is to relieve the applicant from specifying particular documents, since he or she cannot be expected to know in what form information is held. The principal objective of the whole FOISA regime is to make information accessible, provided it can be identified and located at a cost that is not excessive, and provided it does not fall within one of the statutory provisions (such as that in section 14) or statutory exemptions.
16. Where an applicant has made a request for a copy of a document, and it is reasonably clear in the circumstances that it is the information recorded in the document which the applicant wants, the public authority should respond to the request as a request properly made under FOISA.
17. While Mr Rule's request refers to "all correspondence" with and "all documents" referring to specified individuals, the Commissioner considers the description of the requested information provided by Mr Rule (particularly when read alongside the description of the information sources to be searched to locate this) to have been sufficiently clear to enable its identification and location. Since the description is sufficient to enable identification (and thereby location) of the information, he does not consider the specification of any subject matter to have been necessary in the circumstances, as the Ministers appear to suggest. He would also note that this will not be something the applicant is necessarily in a position to know.
18. The Commissioner therefore considers that the request is valid in terms of section 8(1)(c) of FOISA. The Commissioner will now go on to consider the specifics of Mr Rule's application.

### **Section 10(1) of FOISA**

19. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
20. The Ministers failed to respond to Mr Rule's request within this timescale, and only responded once Mr Rule had requested a review of their failure to respond.
21. The Commissioner therefore finds that the Ministers failed to respond to Mr Rule's request for information of 15 July 2009 within the 20 working days allowed under section 10(1) of FOISA and thereby failed to comply with Part 1 of FOISA.

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<sup>2</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/CourtofSessionGuidance2010/Validrequests.asp>



22. The Commissioner notes that the Ministers subsequently provided a substantive response to Mr Rule on 1 October 2009, following his request for review. In the circumstances, he does not require any action to be taken in relation to this breach in response to this decision.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information request made by Mr Rule, in particular by failing to respond to Mr Rule's request for information within the timescales laid down by section 10(1) of FOISA.

For the reason set out in paragraph 22, the Commissioner does not require the Ministers to take any action in relation to this breach in response to this decision.

## Appeal

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Should either Mr Rule or 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**  
**Head of Enforcement**  
**3 June 2010**



## 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.

##### 8 Requesting information

- (1) Any reference in this Act to “requesting” information is a reference to making a request which –  
  
...  
  
(c) describes the information requested.

...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
  - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

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