

# Decision Notice



Decision 088/2012 Mr Michael Russell and the Scottish Ministers

Sound of Barra Special Area of Conservation

Reference No: 201200539  
Decision Date: 15 May 2012

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Mr Russell requested from the Scottish Ministers (the Ministers) information relative to the Special Area of Conservation designation in the Sound of Barra in the Western Isles. The Ministers responded by stating that they did not hold the information requested. Following a review, Mr Russell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the Ministers held no information falling within the scope of the request. She did not require the Ministers to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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.

## Background

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1. On 5 January 2012, Mr Russell wrote to the Ministers requesting the following information:
  - All correspondence between the office of the First Minister/Alex Salmond and any employee of Scottish National Heritage (SNH) between the dates of 10 January 2009 and 15 February 2009 on the subject of a possible Special Area of Conservation designation in the Sound of Barra in the Western Isles
  - All correspondence between the office of the First Minister/Alex Salmond and former environment secretary Michael Russell MSP between 10 January 2009 and 10 February 2009 on the subject of a possible Special Area of Conservation designation in the Sound of Barra in the Western Isles.
2. The Ministers responded on 6 February 2012. In terms of section 17(1) of FOISA, they informed Mr Russell that the Scottish Government did not hold the information requested.



3. On 20 February 2012, Mr Russell wrote to the Ministers requesting a review of their decision. He pointed out that his request was for information held by the First Minister's Office rather than the Scottish Government.
4. The Ministers notified Mr Russell of the outcome of their review on 19 March 2012. The Ministers maintained that they did not hold the information requested, explaining that the First Minister's Office was part of the Scottish Government.
5. On 20 March 2012, Mr Russell wrote to the Commissioner's office, 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.
6. The application was validated by establishing that Mr Russell 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 11 April 2012, the investigating officer notified the Ministers in writing that an application had been received from Mr Russell, giving them an opportunity to comment on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to explain the steps they had taken to identify and locate the information Mr Russell had requested.
8. The Ministers responded on 2 May 2012, providing submissions in support of their position that the requested information was not held.
9. The relevant submissions received from both the Ministers and Mr Russell will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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



11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. In his application to the Commissioner, Mr Russell contended that the possible designation of the Sound of Barra as a Special Area of Conservation was one of the most high profile designations SNH had worked on in recent years. He was surprised that there was no information falling within the scope of his request and questioned whether the Ministers had carried out adequate searches.
13. The Ministers stated that they considered the information request to be very clear in that it listed the correspondents concerned together with dates and times and as such was particularly suitable to undertake specific searches to ascertain whether any information was held.
14. In their submissions to the Commissioner, the Ministers explained the searches and enquiries they had carried out to confirm that they did not hold the information requested by Mr Russell. They confirmed that the terms of the request made it particularly suitable for searching their electronic record and document management systems. While tightly-framed searches had been carried out to mirror the terms of the request, additional searches had been undertaken to ensure that no relevant saved correspondence had been missed.
15. The Ministers had considered it pertinent to consult the relevant policy areas, specifically the sponsorship team for SNH and the appropriate team within Marine Scotland. Both of these had searched their records, but had been unable to locate any relevant information. The Ministers submitted that any information held by them and falling within the scope of Mr Russell's request would have been found during the searches they had undertaken.
16. The Commissioner has considered the steps taken by the Ministers in this connection and is satisfied (taking account of the resources searched, the departments consulted and the reasons provided by the Ministers) that these were adequate in the circumstances. Taking account also of the terms the request, the Commissioner accepts that it was reasonable in all the circumstances for the Ministers to conclude that they did not hold information which fell within the scope of Mr Russell's request. She is therefore satisfied that the Ministers were correct to give Mr Russell notice, in terms of section 17(1) of FOISA, that they held no information falling within the scope of his request.



## **DECISION**

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

## **Appeal**

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Should either Mr Russell 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**  
**15 May 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.

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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.

...

##### 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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