

Decision Notice



Decision 091/2013 Mr Paul Hutcheon and the Scottish Ministers

Re-appointment of Paul McBride QC to the Scottish Legal Aid Board

Reference No: 201201986
Decision Date: 13 May 2013

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

On 16 May 2012, Mr Hutcheon asked the Scottish Ministers (the Ministers) to provide him with all files and correspondence on the re-appointment of Paul McBride QC (who has since died) to the Scottish Legal Aid Board (SLAB) in 2010. The Ministers responded by disclosing some information to Mr Hutcheon, but relied on several exemptions in FOISA to withhold other information. Following an investigation, the Commissioner was satisfied that disclosure of most, but not all, of the withheld information would (or would be likely to) cause substantial prejudice to the effective conduct of public affairs. She required the Ministers to disclose further information to Mr Hutcheon.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(b)(i) and (c) (Prejudice to effective conduct of public affairs)

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

1. On 16 May 2012, Mr Hutcheon wrote to the Ministers, asking for all files and correspondence on issues relating to the re-appointment of Paul McBride to SLAB in 2010.
2. The Ministers responded on 20 June 2012, confirming that they held information falling within the scope of Mr Hutcheon's request. They withheld this information under sections 30(b)(i), 30(c), 36(2) and 38(1)(b) of FOISA. They also took the view that other relevant information was reasonably accessible to Mr Hutcheon on the Scottish Government website and therefore applied the exemption in section 25(1) of FOISA.
3. On 26 June 2012, Mr Hutcheon wrote to the Ministers requesting a review of their decision. He believed the exemptions cited had been wrongly applied, and that the public interest was served by disclosure. The requested information concerned the reappointment of a high profile QC who was, in the words of the First Minister and others, very good at his job: any concerns about his re-appointment should be aired.



4. The Ministers notified Mr Hutcheon of the outcome of their review on 13 July 2012, stating that their original decision was confirmed without modification.
5. On 1 October 2012, Mr Hutcheon 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.
6. The application was validated by establishing that Mr Hutcheon made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 5 October 2012, the Ministers were notified in writing that an application had been received from Mr Hutcheon. They were asked to provide the Commissioner with any information withheld from Mr Hutcheon. The Ministers responded with the withheld information and the case was then allocated to an investigating officer.
8. The investigating officer later contacted the Ministers and gave them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, the Ministers were asked to justify their reliance on the exemptions in sections 30(b)(i), 30(c) and 38(1)(b) of FOISA. From the schedule of documents provided with the withheld information, it was clear that they were no longer relying on the exemption in section 36(2). The Ministers responded with submissions.
9. Information was released by the Ministers during the investigation, subject to redaction of information the Ministers did not believe to fall the scope of Mr Hutcheon's request. The Commissioner is satisfied that the Ministers were correct in identifying information relating to other individuals as not falling within the scope of the request: other information so identified by the Ministers will be considered further below. The information released during the investigation will not be considered further in this decision notice.
10. It also became apparent during the investigation that the information withheld under section 38(1)(b) was simply home contact information for Mr McBride, withheld as the personal data of another individual who remained alive. Mr Hutcheon confirmed that he was not interested in these details, which will not be considered further here.
11. Submissions were obtained from Mr Hutcheon as to why he considered the public interest lay in disclosure of the information withheld under sections 30(b)(i) and 30(c) of FOISA. The information under consideration (subject to a degree of duplication and excluding information not falling within the scope of the request) is that contained in documents 1, 2, 6, 7, 10 and 11.
12. The relevant submissions received from both the Ministers and Mr Hutcheon will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

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

Information not claimed to be exempt

14. As indicated above, the Ministers did not consider all of the information in documents 1, 2 and 7 to fall within the scope of Mr Hutcheon's request. Following discussions during the investigation, further information from these documents was released to Mr Hutcheon. There remained other information which appeared to the investigating officer to fall within the scope of the request. The Ministers were invited to explain why they did not believe this information was covered by the request, but they did not either do so or explain the basis on which it should be withheld under FOISA. However, the Commissioner is also satisfied that this information adds nothing to the press release (already disclosed to Mr Hutcheon) announcing the late Paul McBride QC's re-appointment, or other information already readily accessible in the public domain. Consequently, she will not require its disclosure in this decision.

Section 30(b)(i) – Prejudice to the effective conduct of public affairs

15. The Ministers withheld information in documents 1, 2 and 7 (the same information from each document) under section 30(b)(i) of FOISA. Section 30(b)(i) exempts information where its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice.
16. As the Commissioner has commented in previous decisions, there is a high standard to be met in applying the tests contained in section 30(b)(i). The Commissioner's views on the application of this exemption have been set out at length in a number of decisions, most notably *Decision 089/2007 Mr James Cannell and Historic Scotland*¹ and *Decision 105/2008 Mr Rob Edwards and the Scottish Ministers*².
17. While she will not repeat these views in full here, the Commissioner would re-iterate that in coming to a decision on the application of this exemption, she will consider the actual information withheld and not simply the category of the information to which it belongs or the situation in which the request has arisen.
18. The Commissioner expects public authorities applying this exemption to demonstrate a real risk or likelihood that actual harm will occur at some time in the near (certainly foreseeable) future, not simply that harm is a remote possibility.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600959.asp>

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2008/200700579.asp>



19. Also, the harm in question should take the form of substantial inhibition from expressing advice in as free and frank a manner as would be the case if disclosure were not expected. The word “substantial” is important here: the degree of inhibition has to be of real and demonstrable significance.

Submissions from the Ministers

20. The Ministers explained that the information withheld under section 30(b)(i) related to advice to Ministers about the appointment of members to SLAB. The focus of this advice was to ensure a balanced board and enable Ministers to make informed decisions about appointments. The Ministers believed that it would be unhelpful to both Ministers and the functioning of public body boards if officials providing advice were less than full and frank about the strengths and weaknesses of members.
21. The Ministers asserted that releasing the information would be likely to substantially inhibit the future provision of free and frank written advice on such issues, for fear of it being made public. For Ministers to be able to fully discharge their duties, they argued, they had to be able to access all available information on a topic. This would be significantly hampered if officials were substantially inhibited from providing advice on sensitive issues. The Ministers also argued that it would inhibit good quality candidates from coming forward to apply for public appointments like this, if they believed that a discussion of their performance would be disclosed.
22. The Ministers submitted that public appointments like this are undertaken regularly and similar issues would be likely to occur in future. They considered it likely that officials would be substantially inhibited from providing full and frank advice to Ministers on these issues if they thought that this advice was likely to be released routinely. They believed this could have an adverse impact on the process of future appointments.
23. Having considered the submissions from the Ministers, together with the information in question, the Commissioner is unable to accept that disclosure of the information withheld on page 7 of documents 1, 2 and 7 would, or would be likely to, have the effect of inhibiting substantially the free and frank provision of advice. It is apparent from reading this information that it formed the basis of the narrative contained in the press release (which was disclosed to Mr Hutcheon) announcing Mr McBride’s re-appointment to SLAB. The information would have been readily ascertainable from a number of public sources in any event.
24. Furthermore, the Commissioner is not satisfied that the information withheld on pages 1 and 2 of these documents is exempt under section 30(b)(i) of FOISA. This was created in 2009, almost three years before Mr Hutcheon submitted his information request. From the press release that followed Mr McBride’s re-appointment, if not from other information in the public domain, it would be apparent that Mr McBride was a serving member of SLAB, when his tenure would expire, that his re-appointment was considered by the Ministers and that they approved this for a specified term. The Commissioner cannot, therefore, accept that any of the harm claimed by the Ministers would (or would be likely to) occur as a consequence of disclosure.



25. On the other hand, the Commissioner does accept the Ministers' arguments in respect of the remaining information withheld from these documents, which is more in the nature of individual performance appraisal. Therefore, she must consider the public interest test in relation to this information.
26. The information described in paragraphs 23 and 24 above has not been withheld under any other exemption. However, the Commissioner is satisfied that it adds nothing to the press release (already disclosed to Mr Hutcheon) announcing the late Paul McBride QC's re-appointment, or other information already readily accessible in the public domain. Consequently, she will not require its disclosure.

Public interest test

27. Section 30(b)(i) is a qualified exemption, which means that its application is subject to the public interest test in section 2(1)(b) of FOISA. Therefore, having decided that the information withheld from pages 5 and 9 of documents 1, 2 and 7 is exempt under section 30(b)(i), the Commissioner must now go on to consider whether, in all the circumstances of the case, the public interest in disclosing that information is outweighed by the public interest in maintaining the exemption.
28. The Ministers acknowledged a public interest in disclosure of the withheld information, in order to understand the relationship between the Scottish Government and SLAB in the case of Mr McBride's re-appointment. They also acknowledged a legitimate public interest in public appointments, as these relate to the delivery of public services and are funded by public money.
29. However, the Ministers considered the public interest outlined in the previous paragraph to be met by the independent oversight provided by the Commissioner for Public Appointments in Scotland. In any event, they believed it was outweighed by the public interest in ensuring that well qualified people are not deterred from applying for future public appointments by a lack of confidence in the integrity and confidentiality of the appointment process. There was also a public interest in avoiding inhibition of the Scottish Government's ability to run successful selection exercises in future.
30. The Ministers identified a strong public interest in securing private space for Ministers and officials, within which free and frank debate of sensitive issues, such as public appointments, could be undertaken, without fear that those discussions would subsequently be made public. The Ministers also argued that the prejudice to similar discussions in the future (which could result from disclosure) would not be in the public interest.
31. The Ministers highlighted the importance of Scottish public bodies attracting the best possible candidates, and reassuring those candidates that their personal information (and information relating to their performance) would be handled professionally. Candidates expected confidentiality, which the Ministers considered it their duty to uphold.



32. In his submissions on the public interest test, Mr Hutcheon advised that, at the time his re-appointment was being considered, Mr McBride was a high profile Conservative and a critic of the SNP government on various issues relating to criminal justice. Mr Hutcheon believed the public was entitled to be satisfied that an individual's political views were not a consideration in the re-appointment process. On a related point, Mr Hutcheon believed any concerns about Mr McBride's re-appointment, or the nature of any intervention, should be made known.
33. Mr Hutcheon also commented that First Minister Alex Salmond paid tribute to Mr McBride after his death. He considered that the public had a right to know that the Scottish Government's private views on Mr McBride aligned with Mr Salmond's public tribute.
34. Having considered the submissions from the Ministers and Mr Hutcheon, the Commissioner acknowledges that there is a public interest in knowing that an individual's political views are not a consideration of the re-appointment process. The Ministers have certainly made clear that they *should not* be a consideration (for example, in the press release about Mr McBride's re-appointment, which has already been released to Mr Hutcheon and which contains the text "all appointments are made on merit and political activity plays no part in the selection process"), but the Commissioner accepts that there is still a public interest in being reassured that this is matched by what happens in practice.
35. With that in mind, the Commissioner believes that release of the generic information which has been withheld on page 9 of documents 1, 2 and 7 (i.e. a blank matrix, with the generic skills but no information on individual Board members) would also contribute to public understanding of the factors to be taken into account by Ministers in deciding whether to appoint or re-appoint members to SLAB.
36. The Commissioner notes the other arguments made by Mr Hutcheon as to why he considers that the public interest lies in disclosure of the withheld information, but is satisfied that disclosure would not contribute in any way to these areas of interest.
37. Having considered the public interest arguments made by the Ministers, the Commissioner acknowledges their argument that independent oversight of the appointments process is provided by the Commissioner for Public Appointments in Scotland. However, that Commissioner's functions relate to new appointments only, not to the renewal of existing appointments³.
38. That said, the Commissioner agrees that there is a public interest in allowing Ministers and officials to engage in free and frank debate about public appointments and re-appointments, including consideration of issues such as the performance of serving members, without fear (where such protection is merited) that these discussions will be made public.

³ Public Appointments and Public Bodies etc. (Scotland) Act 2003 and the related Code of Practice



39. There is also, the Commissioner accepts, a significant public interest in ensuring that candidates applying to Scottish public bodies are re-assured that their personal information, and information regarding their performance, is held in a professional manner and kept confidential. This public interest also extends to maintaining the integrity and confidentiality of the appointments process, so that future selection exercises are not inhibited.
40. For these reasons, the Commissioner has concluded, on balance, that the public interest in disclosing the information on pages 5 and 9 (to the extent that it is specific to Mr McBride) of documents 1, 2 and 7 is outweighed by that in maintaining the exemption in section 30(b)(i) of FOISA. Therefore, the Commissioner finds that the Ministers were entitled to withhold that information under section 30(b)(i).
41. As the generic information contained on page 9 of documents 1, 2 and 7 (see paragraph 35 above) does not concern the free and frank provision of advice or comment directly on the performance of current or previous members of SLAB, and she is satisfied that its disclosure would inform the public as to the criteria to be met when a candidate is considered for appointment or re-appointment to SLAB, the Commissioner has concluded that the public interest in disclosure of this information outweighs that in maintaining the exemption in section 30(b)(i) of FOISA. The Commissioner therefore finds that the Ministers were wrong to apply the exemption in section 30(b)(i) to this information.

Section 30(c) – Prejudice to the effective conduct of public affairs

42. Section 30(c) of FOISA exempts information if its disclosure “would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs”. The use of the word “otherwise” distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would be caused to the conduct of public affairs by release of the information, and how that harm would be expected to follow from release.
43. Section 30(c) applies where the harm caused, or likely to be caused, by disclosure is at the level of substantial prejudice. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers the harm in question must be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur and therefore needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some point in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.
44. The Commissioner takes the view that it is important for public authorities to treat each request for information on a case by case basis. Release of information in one case should not be taken to imply that communications of a particular type will be routinely released in future. The circumstances of each case, including the content of the specific information under consideration, must be taken into consideration.



Submissions from the Ministers

45. The Ministers have provided separate submissions on their application of section 30(c) of FOISA for the withheld information in documents 2, 6, 7, 10 and 11. These will be considered in turn below.

Documents 2 and 7 (performance appraisal)

46. The Ministers explained that the withheld information was contained in an annual appraisal of Mr McBride, which was a personal document between Mr McBride, the appraiser and the Ministers (as “employer”). The Ministers considered that the prospect of disclosure would be likely to inhibit the appraiser from giving an accurate reflection of the appraisee’s performance. This would also inhibit the Ministers from making sound decisions about reappointments to public bodies.
47. The Ministers also submitted that an appraisal was personal to (and about) an individual, for their own personal development: this would be lost through disclosure.
48. Having considered the withheld information, the Commissioner accepts the Ministers’ submissions. Clearly, disclosure can have no effects of the kind described in relation to Mr McBride, but that is not the point. The Commissioner acknowledges that there is a wider issue here, in that disclosure would be likely to have the consequences described for other appraisals, of members of SLAB and other public bodies. In relation to this wider situation, the Commissioner agrees with the arguments advanced by the Ministers that disclosure would be likely to inhibit those carrying out appraisals of board members from being frank in their comments on an individual’s performance and contribution, which would in turn defeat the purpose of the appraisal process. This would, the Commissioner accepts, be likely to inhibit substantially the Ministers’ ability to make fully informed decisions about whether an individual should be reappointed to a public body in future.
49. The Commissioner therefore finds that the Ministers were justified in applying the exemption in section 30(c) of FOISA to this withheld information.

Documents 6 and 10

50. The Ministers argued that the withheld information in documents 6 and 10 (in both cases, a pro-forma relating to Mr McBride’s reappointment) contained personal information relating to Mr McBride, which it would not be appropriate to release into the public domain. The document was, the Ministers advised, used for the basis of a news release about Mr McBride’s re-appointment (which was disclosed to Mr Hutcheon).



51. Having considered the withheld information in documents 6 and 10, together with information which is readily available in the public domain, the Commissioner is unable to uphold the Ministers' reliance on the exemption in section 30(c) for the majority of this information. It is evident from reviewing information in the public domain, including that contained in the press release the Ministers issued after Mr McBride's re-appointment in March 2010, that all of the information that has been withheld (other than his home address) is readily available. For this reason, the Commissioner cannot accept that disclosure of this information would otherwise prejudice substantially, or be likely to prejudice substantially the effective conduct of public affairs.
52. The Commissioner acknowledges that Mr McBride's home address forms part of the withheld information in this document. Mr Hutcheon has confirmed that he does not wish to receive this, so (as indicated above) the Commissioner has not considered whether it should be disclosed.
53. For the reasons set out above, the Commissioner finds that the Ministers were not justified in relying on the exemption in section 30(c) of FOISA for withholding this information from Mr Hutcheon.

Document 11

54. The information being withheld from Mr Hutcheon in document 11 is a letter of appointment to Mr McBride QC, and completed forms. A copy of the letter has been disclosed to Mr Hutcheon, subject to the redaction of Mr McBride's home address: as Mr Hutcheon has confirmed that he does not require the home address, the Commissioner will not consider the letter further in this decision.
55. Mr Hutcheon was also provided with a blank copy of the withheld monitoring form. The Ministers explained that this form states it will be a confidential document once completed. They went on to explain that they are committed to ensuring that public appointees are treated fairly and consistently and that no one is disadvantaged or discriminated against. They considered the monitoring form to be an important means of gathering information to secure that commitment. In their view, there is a clear expectation that the information gathered will be used for that purpose, will not be attributed to an individual and will be treated confidentially. They believed disclosure of the information in the completed form would significantly undermine the trust and professionalism expected by candidates of the public appointments process.
56. Having considered the withheld information in document 11, the Commissioner acknowledges that the monitoring form is clearly marked to confirm that it will be held in confidence when it has been completed. The information from other forms in document 11 has also been withheld from Mr Hutcheon. These contain no explicit statement on confidentiality. Nonetheless, the Commissioner accepts that a person completing any of these forms would reasonably expect any information recorded within them to be seen by persons involved in the reappointment process only, and not to be shared any more widely than that.



57. The Commissioner therefore accepts that disclosure of any of the information in the completed forms this information was to be disclosed, in response to Mr Hutcheon's FOI request, this would undermine the trust that candidates seeking appointment/reappointment to SLAB, or any other Scottish public body, would (and should) have in the public appointments process.
58. For these reasons, the Commissioner accepts that disclosure of the information in the completed forms would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. The Commissioner finds that the Ministers were justified in applying the exemption in section 30(c) of FOISA to this information.

Conclusion

59. As the Commissioner has found that the Ministers were wrong to rely on the exemption in section 30(c) for withholding certain information from Mr Hutcheon in documents 6 and 10, as detailed above, she is not required to consider the application of the public interest test to this information. The Commissioner does not, however, require the Ministers to disclose this information: she is satisfied that it adds nothing to the press release (already disclosed to Mr Hutcheon) announcing the late Paul McBride QC's re-appointment.
60. As the Commissioner is satisfied that the Ministers acted correctly in applying the exemption in section 30(c) to the withheld information in documents 2, 7 and 11 (with the exception of Mr McBride's address, which she is not required to consider here), she must now consider the application of the public interest test in section 2(1)(b) of FOISA.

Public interest test

61. Section 30(c) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the withheld information in documents 2, 7 and 11 is exempt under section 30(c), the Commissioner must now go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
62. In their submissions, the Ministers recognised a public interest in release of this information, to account for the use of public money. There was also a public interest in being open and transparent about the recruitment process and, by extension, in ensuring that appointment exercises are carried out fairly and openly.
63. On the other hand, the Ministers believed release of information relating to the consideration of applicants and their suitability for a specific post would be likely to substantially inhibit officials from providing written advice on similar sensitive issues, freely and frankly, in the future. Ultimately, this would affect officials' ability to make robust recruitment decisions and clear them with the responsible Minister.



64. The Ministers also emphasised the need to conduct such public appointments in a way that instilled confidence in the process and encouraged the very best candidates to apply. Independent scrutiny by the Commissioner for Public Appointments in Scotland should provide the necessary public confidence. The Ministers argued that view that the process would clearly be undermined by the disclosure of information provided by individuals on the basis that it was to be held in confidence.
65. The Ministers believed there was a clear public interest in protecting the integrity of the appointment process and ensuring that well-qualified people were not deterred from applying for such appointments by a lack of confidence in the integrity and confidentiality of that process. Disclosure might substantially damage relationships between the Scottish Government and any prospective applicants for future positions, and inhibit the evaluation process (for which a trusting and communicative relationship is essential). The ability to run successful selection exercises in future, they submitted, should in no way be inhibited.
66. Prejudice to the appointment process in the ways described above, the Ministers argued, amount to substantial prejudice to the effective conduct of public affairs.
67. In his submissions on the public interest, Mr Hutcheon advanced the same arguments as he did in relation to the exemption in section 30(b)(i) of FOISA (see above).
68. Having considered the submissions from the Ministers and Mr Hutcheon, for the same reasons as expressed above in relation to section 30(b), the Commissioner considers that information already disclosed to Mr Hutcheon would go some way to fulfilling the public interest in knowing that an individual's political views are not a consideration in the re-appointment process. In any event, she does not believe that release of any of the withheld information in documents 2, 7 and 11 would contribute towards satisfying this public interest.
69. While acknowledging the other arguments advanced by Mr Hutcheon, the Commissioner does not find that disclosure of any the withheld information she has found to be exempt under section 30(c) would fulfil these areas of interest.
70. Having considered the public interest arguments advanced by the Ministers, the Commissioner agrees that there is a public interest in disclosure of information which demonstrates openness and transparency in the recruitment process, to ensure that appointment exercises are carried out fairly and openly. The Commissioner also recognises that this has to be balanced with the significant public interest in ensuring that there is confidence in the public appointments process, with a view to encouraging the best possible candidates to apply.
71. The Commissioner accepts that disclosure of the withheld information in documents 2, 7 and 11 would damage the integrity of the public appointments process, by reducing applicants' trust in the process (and in the bodies themselves, particularly in relation to the protection of personal and sensitive information). This could lead to suitably qualified and experienced individuals being discouraged from applying for such positions.



72. On balance, in all the circumstances of this case, the Commissioner concludes that the public interest in disclosing the information is outweighed by that in maintaining the exemption in section 30(c) of FOISA. Therefore, the Commissioner finds that the Ministers were entitled to withhold the information in documents 2, 7 and 11 in line with section 30(c) of FOISA.

DECISION

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

The Commissioner finds that certain information was correctly withheld under sections 30(b)(i) and (c) of FOISA.

However, the Commissioner found that the Scottish Ministers should not have withheld certain other information under section 30(b)(i) and 30(c) of FOISA, and in those respects failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Ministers to disclose to Mr Hutcheon a blank version of the skills matrix forming Annex C to the Ministerial submission withheld as part of documents 1, 2 and 7 (that is, without the names and scores of the individual candidates), by 27 June 2013.

Appeal

Should either Mr Hutcheon or the Scottish 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.

Margaret Keyse
Head of Enforcement
13 May 2013



Appendix

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.

...

- (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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-

- (i) the free and frank provision of advice; or

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.