

# Decision Notice



Decision 162/2013 Mr Paul Hutcheon and the Scottish Ministers

Workstreams on the constitution/referendum

Reference No: 201202329

Decision Date: 7 August 2013

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

**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

On 3 September 2012, Mr Hutcheon asked the Scottish Ministers (the Ministers) for information setting out the remits of workstreams on the constitution and the constitutional referendum. Following a review, the Ministers responded by providing some information. Following an investigation, the Commissioner found that the Ministers had provided Mr Hutcheon with all of the information they held in relation to his request.

## Relevant statutory provisions

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

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 3 September 2012, Mr Hutcheon wrote to the Ministers in the following terms:  
*Regarding the information in the attachment, please provide me with all information in documents in files setting out the remit of each workstream, as well as the number of people working in each workstream.*  
The attachment referred to was a list of the names and titles of the workstreams being undertaken by the Elections and Constitution Development Division on the constitution and the constitutional referendum.
2. Having received no response, Mr Hutcheon wrote to the Ministers again on 8 October 2012, requesting a review in respect of their failure to respond.



3. On 2 November 2012, the Ministers wrote to Mr Hutcheon in response to his requirement for review. They apologised for the delay in responding and explained that the remit of each workstream would be published on their website<sup>1</sup>. The Ministers informed Mr Hutcheon that they did not hold the number of people working in each workstream, as staff were employed across the workstreams in relation to their policy areas (as and when required) and their contributions were not separately identified.
4. Mr Hutcheon wrote to the Commissioner's office on 10 November 2012, 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.
5. 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. The case was then allocated to an investigating officer.

## Investigation

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6. The investigating officer subsequently contacted the Ministers, 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. In particular, the Ministers were asked to explain the information they held and the steps they had taken to identify and locate it.
7. Mr Hutcheon was dissatisfied as he did not believe he have been given all the information he sought on the remits of the workstreams. He expected that "the teams working on each workstream will have much fuller remits than the ones I have been given." Mr Hutcheon also confirmed that he did not want to make an application about his request for the number of staff working in this area. He did not ask the Commissioner to consider any failure to comply with the statutory timescales in responding.
8. During the investigation (on 7 February 2013), the Ministers provided Mr Hutcheon with some information to give context to the information published on their website.

## Commissioner's analysis and findings

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

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<sup>1</sup> <http://www.scotland.gov.uk/Topics/constitution/About/Workstreams>



## Section 1(1) of FOISA – General entitlement

10. Section 1(1) of FOISA creates a general entitlement to information held by a Scottish public authority, subject to the exemptions in Part 2 of FOISA and any other relevant qualification in Part 1. To comply with section 1(1), therefore, an authority must identify all information falling within the scope of a request and provide it to the applicant, unless it is exempt from disclosure under Part 2 of FOISA, or otherwise subject to one or more of the provisions set out in Part 1.
11. Mr Hutcheon's request was for:  
*"... all information in documents in files setting out the remit of each workstream ..."*
12. The information supplied by the Ministers to Mr Hutcheon included a table (as published on the Scottish Government website) with:
  - the workstream or project's full title;
  - the remit (a brief summary);
  - the date work began;
  - an anticipated completion date; and
  - the members of staff reported to and who instructed the workstream.
13. The Ministers have therefore provided Mr Hutcheon with information that falls within the scope of his request. The question is whether they hold any further such information. The Commissioner's decision will therefore consider (i) whether any of the other information located by the Ministers, but which they submit does not fall within the scope of the request, is covered by the request, and (ii) whether the searches carried out by the Ministers to ascertain what information they held were adequate and proportionate in the circumstances.

### *Interpretation of the request*

14. The Ministers explained that they had interpreted Mr Hutcheon's request to mean (based on the definition in the Oxford Dictionaries Online) "the task or area of activity officially assigned ..." to each workstream. When searching for this information, the Ministers recognised that they did not define the term "workstream", or the format to be followed in the establishment and operation of any workstream, centrally. That is, workstreams had been established to respond to the demands of Ministers in taking forward their Constitutional Reform Agenda, with the result that information held on each workstream varied across Directorates, and programmes and projects had evolved documentation to meet individual functions.
15. The Ministers commented that they continued to believe that the information published on the Scottish Government website represented an accurate and current description of the remits of the workstreams.



16. The Ministers were asked if they held, at the time of the request or review, any further information on the remit of the workstreams. The Ministers explained that they held further information relevant to the development of constitutional reform policy, from which each of the workstreams stemmed. They were of the view that that information was outwith the scope of Mr Hutcheon's request. That information was provided to the investigating officer, with explanations of why it was not considered to fall within the scope of the request.
17. The Commissioner has considered the information described by the Ministers as falling outwith the scope of Mr Hutcheon's request, with the relevant submissions. Having considered the request, application and other submissions from Mr Hutcheon, she considers it reasonable to interpret the request as seeking information on the remits under which the specific workstreams were in fact operating, rather than, say, more general information on workstreams or information on the development of these specific remits. Mr Hutcheon simply expects the workstreams to be operating under more comprehensive remits than those he has been provided with.
18. Within the context set out in the previous paragraph, the Commissioner accepts the definition provided by the Ministers. On that basis, she is satisfied that they interpreted Mr Hutcheon's request reasonably and accepts their conclusions on the information they considered to fall outwith the scope of the request.

#### *Information held by the Ministers*

19. The Ministers were asked to provide the Commissioner with any evidence of searches or enquiries carried out to ascertain what relevant information was held. They explained that officials searched the files in the Scottish Government's data management system (eRDM) specific to the Elections and Constitution Division using term "remit" and looking for references to remits within documents.
20. The Ministers explained that officials with responsibility for implementation of the financial provisions of the Scotland Act 1998 (including the programme manager and specific project leads) were also contacted to search their areas of interest. The programme co-ordinator discussed the request with each of them, to ensure that all the relevant information had been identified. Files within eRDM relating to the implementations of these financial provisions were also searched. Information was also sought, the Ministers explained, from project leaders for the implementation of the non-financial provisions of the 1998 Act.
21. The Ministers were asked, in particular, about the remit of certain workstreams: as provided to Mr Hutcheon and published by them. It was pointed out to the Ministers that several of these (for example, on Justice) were in very general terms, that is:

*Progress work showing how Scotland would make the transition to a successful, independent country following a yes vote for independence in the referendum.*



22. The Ministers were asked to confirm that there was no information held at the time of the request giving a detailed, specific remit for these work streams. They replied that their search for information at the time (as described above) did not identify any further records on the remits of workstreams, beyond those identified already. Workstreams without a more defined descriptor were currently scoping out their roles and identifying areas of work to be progressed, and therefore had not formed specific remits. They confirmed which workstreams fell within this category and which did not (which corresponded with the information as released to Mr Hutcheon and published).
23. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Ministers took adequate, proportionate steps to establish what information they held and which fell within the scope of the request. While it may be surprising that a substantial number of these workstreams have not yet formed specific remits, on balance the Commissioner accepts the Ministers' submissions on this point. In the circumstances, she is satisfied that Mr Hutcheon was provided with all of the information held by the Ministers and 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 Hutcheon.

## Appeal

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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**  
**7 August 2013**



## 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.
- ...