

Decision Notice



Decision 181/2012 Mr David Rule and the Scottish Ministers

Communications with Donald Trump and the Trump Organization

Reference No: 201200871

Decision Date: 5 November 2012

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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Summary

Mr Rule requested from the Scottish Ministers (the Ministers) information contained in communications between the First Minister and his office and Donald Trump and the Trump Organization. Mr Rule was not satisfied that he had been provided with all the information which fell within the scope of his request and applied to the Commissioner for a decision. Following an investigation, during which additional documents were identified as falling within the scope Mr Rule's request, the Commissioner found that in general the Ministers had complied with Part 1 of FOISA in dealing with the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 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

1. On 11 October 2011, Mr Rule wrote to the Ministers, requesting all the information contained in communication between the First Minister and his office and Donald Trump and the Trump Organization.
2. On 11 November 2011, having received no response to his request, Mr Rule wrote to the Ministers, requesting a review on the basis that they had failed to respond.
3. The Ministers notified Mr Rule of the outcome of their review on 21 December 2011. They advised Mr Rule that his request was invalid. On 22 December 2011, Mr Rule wrote to the Commissioner, applying for a decision on the basis that he did not consider his request to be invalid.



4. The Commissioner issued a decision on that application on 15 March 2012. In Decision *049/2012 Mr Rule and the Scottish Ministers*¹, the Commissioner concluded that Mr Rule's request was valid and required the Ministers to review their handling of the request.
5. On 30 April 2012, the Ministers responded to Mr Rule's request, supplying 10 letters which they considered to fall within the scope of his request, subject to minor redactions of personal data. The Ministers stated that they held no further relevant information.
6. On 3 May 2012, 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

8. On 28 May 2012, the Ministers were notified in writing that an application had been received from Mr Rule. The Ministers were provided with an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and respond to specific questions. In particular, they were asked to explain the searches they had carried out to establish what relevant information they held. Submissions on these searches were provided.
9. The relevant 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

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Rule and the Ministers and is satisfied that no matter of relevance has been overlooked.
11. Mr Rule's application was made on the basis that he did not believe he had been provided with all the information falling within the scope of his request. He specifically highlighted that he had not been provided with any information predating May 2011. He also questioned why he had not been provided with particular correspondence from a specified day (when Mr Salmond and Mr Trump had met) and involving a specified individual, and also why he had not been provided with correspondence relating to another meeting, held in October 2007.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201102393.asp>



12. Mr Rule did not raise any concerns relating to the redaction of personal data from the information that had been supplied. Consequently, these redactions will not be considered further in this decision.

Section 1(1) of FOISA – General entitlement

13. Section 1(1) of FOISA creates a general entitlement to access information held by a Scottish public authority, subject to the application of exemptions in Part 2 of FOISA, and to any other relevant provision in Part 1. The information to be given is that held by the authority at the time the request is received, subject to qualifications which do not appear to be relevant here.
14. In order to comply with section 1(1), therefore, an authority must take reasonable steps to identify and locate all information it holds and which falls within the scope of the request, and (in the absence of an applicable exemption or other relevant provision of Part 1 of FOISA) provide it to the applicant.
15. The Ministers advised that searches for information had been undertaken by the First Minister's office in both paper and electronic records. They provided details of the search terms used to identify and locate information contain in their electronic record and document management systems.
16. The Ministers also advised that they had carried out further searches after being advised of Mr Rule's application to the Commissioner, which had identified two additional documents. These predated May 2011 and were supplied to Mr Rule during the investigation. The Ministers confirmed that these later searches had included a search against the name of the individual specified by Mr Rule in his application to the Commissioner, which had failed to identify any relevant information.
17. With reference to the particular meeting in 2007 referred to in Mr Rule's application, the Ministers explained that the meeting in question was a GlobalScot dinner at which both Mr Salmond and Mr Trump had been present. The Ministers advised that the GlobalScot network (under the auspices of which the dinner had been held) was an initiative of Scottish Enterprise and that any correspondence around this dinner would be logistical and handled by the parties arranging it, not the First Minister or the First Minister's office. The Ministers highlighted that this was not a meeting between just the First Minister and Mr Trump and was not organised by either party.
18. Following the provision of additional information during the investigation, Mr Rule still did not believe that he had been provided with all the information. Specifically, he referred to a missing attachment from a document supplied to him, inferring that there would be other missing information of which he was unaware.



19. In response to these comments, the Ministers advised that the attachment was an open letter to a Councillor, published in the press in March 2009. The Ministers provided a weblink to the document in question and advised that they did not retain a copy of the document as it was not thought necessary given that the information was in the public domain. The Ministers reaffirmed that they were not withholding information from Mr Rule in relation to these requests.
20. Mr Rule remained dissatisfied with this response. He was surprised that the Ministers had not retained a copy of the open letter, on the understanding that all records of communications were usually retained, even if they were in the public domain. He also raised concerns that the instances of missing information, highlighted during the handling of his request, suggested that the searches conducted were not complete and other information may therefore be missing. He suggested that what he had received covered a different timespan to that covered by his request.
21. The Ministers explained that they did not retain a copy of the open letter as it was sent to the First Minister “for interest” and did not refer to any policy or governmental requirement. It was therefore considered unnecessary to retain a copy for the official record. They emphasised that information which was not relevant to the official record would not necessarily have been retained, unless there was some relevant business or policy interest or requirement.
22. The Ministers also commented that, as Mr Rule did not specify a timescale in his request, the searches conducted did not discount any information based on when it was issued or received, except with regard the date of receipt of the request. They highlighted that a considerable amount of information with regard to Mr Trump and his organisation was already in the public domain, available on the Scottish Government’s website. They also referred to their published media briefings, noting that these contained frequent references to whether there had been contact between the First Ministers and Mr Trump (mostly confirming that there had not been any significant contact).
23. The Ministers went on to submit that, as Mr Rule’s request specified correspondence between the First Minister and Donald Trump or his organisation, this limited the amount of information falling within the scope of the request. While acknowledging that there was a significant amount of correspondence (within the Scottish Government) regarding (and from) Mr Trump and his company, they stated that they had identified (through searches) all the information that they held involving the parties specified in Mr Rule’s request. The Ministers considered Mr Rule’s assertion that there was information “missing” to be based on his own misunderstanding of the interests of the First Minister with regard to Mr Trump and a failure to realise that communication was more likely to be with officials or Ministers relevant to the area with an interest in the topic.
24. The Ministers, to support their contention that no further information was held, also supplied the Commissioner with evidence of some of the search returns from the various electronic search terms used. These confirmed that, although there was significant correspondence involving Donald Trump or his organisation, it did not necessarily stem from, and was not necessarily received by, the First Minister or his office.



25. Taking account of the additional searches and the information supplied to Mr Rule during the course of this investigation, together with the submissions received from the Ministers, the Commissioner accepts that the Ministers searches, taken as a whole, were reasonable and adequate in the circumstances, and could be expected to identify and locate any information falling within the scope of Mr Rule's request. On the whole, she accepts the Ministers' explanations, while finding Mr Rule's expectations (in some respects at least, particularly in relation to the retention of records) to be somewhat unrealistic.
26. The Commissioner notes, however, that not all of the relevant information was identified, located and provided to Mr Rule in responding to either his request or his requirement for review. In failing to identify all the information falling within the scope of Mr Rule's request at that time, as opposed to during the investigation, the Ministers failed to comply fully with section 1(1) of FOISA.
27. Given that the Ministers conducted further searches during the investigation and provided Mr Rule with the additional information located, the Commissioner does not require the Ministers to take further action in relation to this failure.

DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) generally complied with Part 1 of FOISA in responding to the information request from Mr Rule, but, in failing to identify all of the information falling within the scope of his request, they failed to comply fully with the requirements of section 1(1) of FOISA.

The Commissioner does not require the Ministers to take any action in this particular case.

Appeal

Should either Mr Rule 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 notice.

Margaret Keyse
Head of Enforcement
5 November 2012



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.
- ...
- (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.
- ...