

# Decision Notice



Decision 186/2010 David Rule and the Scottish Ministers

The First Minister's engagements

Reference No: 201001107

Decision Date: 10 November 2010

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr David Rule (Mr Rule) requested from the Scottish Ministers (the Ministers) the First Minister's engagements for a specified period. The Ministers did not respond until a request for review had been made, and advised that the information would be published in future. Following a review, Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had failed to deal with Mr Rule's request for information in accordance with Part 1 of FOISA, by failing to supply the information in line with section 1(1). As the Ministers disclosed the information requested to Mr Rule during the investigation, the Commissioner did not require the Ministers to take any further action in response to this decision.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (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 24 March 2010, Mr Rule emailed to the Ministers, requesting the engagements of the First Minister from 1 November 2009 – 23 March 2010.
2. Mr Rule received no response to this request and he emailed the Ministers on 25 April 2010, requesting a review of their failure to respond.
3. The Ministers provided their response by email on 13 May 2010 (attached to the email was a letter dated 12 May 2010). Without providing any information or referring to any exemption or other provision within Part 1 of FOISA, they advised Mr Rule that information about Ministerial engagements could be found at a particular website (for which they provided the address). The website did not (at that point) contain details of the First Minister's engagements during the period specified by Mr Rule. They advised that they were still collating information for 2009/10, which they would publish in due course.



4. After receiving this letter, Mr Rule contacted the Ministers, noting that no exemption had been cited in response to his request. He requested clarification on this point. In response, the Ministers acknowledged that this letter had contained some technical errors, and indicated that the official concerned would write later in the same week to rectify these.
5. On 28 May 2010, having not received any further communication from the Ministers, 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. He noted that the information he requested had not been supplied and was not available online, and the Ministers had cited no exemption as grounds for withholding it.
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.

## Investigation

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7. On 10 June 2010, the Ministers were notified in writing that an application had been received from Mr Rule and were asked to provide the Commissioner with any information withheld from him. The Ministers responded with the information requested by email on 2 July 2010. The case was then allocated to an investigating officer.
8. 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 justify their reliance on any provisions of FOISA they considered applicable to the information requested.
9. The Ministers responded on 5 August 2010 with their submissions. On the same date, they also disclosed to Mr Rule the information he had requested.

## 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 withheld information and the submissions made to him by both Mr Rule and the Ministers and is satisfied that no matter of relevance has been overlooked.
11. The Commissioner notes that the information requested by Mr Rule has now been disclosed to him. As in all cases, his decision considers the handling of Mr Rule's request at time when the Ministers notified Mr Rule of the outcome of their review.



## Section 1(1) – General entitlement

12. 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 it by the authority, subject to certain restrictions (which apply by virtue of section 1(6)). The right to receive information can be disapplied in a number of circumstances, including where:
  - a. the information is exempt in terms of one of the exemptions in Part 2 of FOISA (subject to the application of the public interest test in section 2(1)(b), where relevant)
  - b. the cost of complying with the request would exceed £600 (section 12)
  - c. the request is either vexatious or repeated (section 14)
  - d. the public authority does not hold the information (section 17)
13. Where an authority refuses to provide information in response to a request, having concluded that one (or more) of these provisions applies, the applicant must be given notice of that decision. Section 16 of FOISA requires that a formal “refusal notice” is given where any exemption is applied, or where sections 12 or 14 are held to be applicable. Section 17 requires that notice is given where information is not held.
14. In this case, the Ministers’ response to Mr Rule’s request for review did not
  - a. disclose the information requested by Mr Rule
  - b. notify him that the information was being withheld under any exemptions in Part 2 of FOISA, or
  - c. notify him that any other provision within Part 1 of FOISA was applicable in this case.
15. The Ministers’ submissions confirmed that they did not consider any exemption (or other provision in Part 1 that would disapply the right in section 1(1) of FOISA) to be applicable in this case.
16. They advised the Commissioner that they were committed to proactively publishing details of Ministerial engagements six months in arrears. However, due to other priorities, it had not been dealt with. The Ministers acknowledged that errors had been made in the handling of Mr Rule’s request, and apologised for this.
17. As the Ministers did not provide the information which Mr Rule had requested, nor claim that any provision in either Parts 1 or 2 of FOISA was applicable, the Commissioner has concluded that the Ministers failed to comply with section 1(1) of FOISA in this case.
18. As the Ministers have now disclosed the information to Mr Rule, the Commissioner does not require the Ministers to take any action in response to this failure. However, this breach will be noted and may be taken into account in determining whether any future action should be taken in respect of the Ministers under the Commissioner’s Enforcement Strategy.



## DECISION

For the reasons set out above, the Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request.

Given that the Ministers disclosed the information during the investigation and have apologised for the handling of Mr Rule's request, the Commissioner does not require them to take any further action in response to this decision.

## Appeal

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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**  
**10 November 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.

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- (6) This section is subject to sections 2, 9, 12 and 14.