

Cabinet Secretary for the Economy, Jobs and Fair Work

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

INTERVENTION BY THE SCOTTISH INFORMATION COMMISSIONER INTO SCOTTISH GOVERNMENT FOI PRACTICE

INFORMATION ABOUT INDIVIDUAL CASES

Introduction

1. As you are aware, as part of his interview with you, the Scottish Information Commissioner wishes to discuss three specific FOI cases.
2. This minute provides an assessment of the matters that the Commissioner may wish to discuss, based on the information contained in the case file and the FOI tracker.
3. For each case, your private office will provide copies of the advice that went to you on publication, the responses from your office, and the correspondence that was issued to the requester.
4. The Commissioner has not indicated to us the specific matters that he wishes to discuss. What follows is our assessment, based on the case file and the FOI tracker.

FOI/17/00406

Details of the case

Name of requester	[redacted], Liberal Democrat researcher
Date of request	13 February 2017
Directorate	Economic Development
Lead official	[redacted]
Stage concluded	Request

Timeline

<u>Date</u>	<u>Event</u>
13 February 2017	<i>Request received</i> Request for correspondence exchanged with Scottish Funding Council between 1 June 2015 and 12 February 2017 re the Enterprise and Skills Review; and a list of dates of all meetings between SG officials and Ministers and the SFC at which the Review was discussed. [On 6 February the requester had submitted request FOI/17/00315, which was identified as substantially overlapping with this one. A single response to both requests was prepared.]
3 March 2017	Case handler issued a final check to business areas for information in respect of both requests.
10 March 2017	Case handler issued holding response to requester about both requests, advising “it is taking longer than anticipated to deal with

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	your requests due to the number of business areas across the Scottish Government holding relevant information”.
10 March 2017	Draft responses (covering these two cases and related case FOI/17/00316 from a different Lib Dem researcher) sent to special advisers for comment.
13 March 2017	<i>20 day deadline for responding to the request</i>
20 March 2017	PS/Special advisers advised case handler of Stewart Maxwell's views. He sought to have four attachments withheld under section 29(1)(a) (formulation or development of SG policy), a letter withheld under section 30(b)(ii) (free and frank exchange of views) and redactions to an email, also under section 30(b)(ii).
20 March 2017	Case handler revised response in accordance with Stewart Maxwell's views and resubmitted to special advisers. Also sent to Mr Brown and DFM for clearance.
21 March 2017	PS/Special advisers advised that if the changes had been made the response could go as Mr Brown had cleared it.
22 March 2017	Mr Brown's private office advised that he had only cleared FOI/17/00316 and that FOI/17/00315 and 00406 were still under consideration.
2 May 2017	Case handler sought an update from Mr Brown's private office.
17 May 2017	Mr Brown's private office advised that he was content for the response to be issued.
17 May 2017	<i>Response sent to requester</i>

Potential matters for discussion

- Cause of the delay in responding to the request

FOI/17/00844

Details of the case

Name of requester	[redacted] , Sunday Post
Date of request	16 March 2017
Directorate	Transport Scotland
Lead official	[redacted]
Stage concluded	Request

Timeline

<u>Date</u>	<u>Event</u>
16 March 2017	<i>Request received</i> Request for a copy of the agreement which saw Transport Scotland/the Scottish Government buy Glasgow Prestwick Airport from Infratil for £1 in 2013, including any contract or letter of agreement which indicates the terms of the deal.
5 April 2017	Case handler completed redactions of the Agreement for the sale and purchase of shares.
6 April 2017	Case handler consulted Glasgow Prestwick Airport on proposed release of information and intended redactions.

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7 April 2017	Case handler consulted Infratil's legal advisers (in New Zealand) on proposed release of information and intended redactions.
12 April 2017	Case handler confirmed that the redactions had been adjusted as requested by Infratil.
13 April 2017	<i>20 day deadline for responding to the request</i>
21 April 2017	Draft response sent to special advisers for comment, proposing to release the document with redactions in terms of under sections s.33(1)(b) (Commercial Interests), s.31(1) (National Security) and s.38(1)(b) (Personal Data).
28 April 2017	Special advisers' private office confirmed that special advisers were content for the draft response to be sent for Ministerial clearance.
28 April 2017	Draft response sent to Mr Brown for clearance.
17 May 2017	Mr Brown's private office indicated that he was content, so long as the request had been thoroughly checked.
22 May 2017	<i>Response sent to requester</i>

Potential matters for discussion

- Causes of the delays in responding to the request

FOI/17/01567

Details of the case

Name of requester	[redacted] , The Guardian
Date of request	6 July 2017
Directorate	Transport Scotland
Lead official	[redacted]
Stage concluded	Review

Timeline

<u>Date</u>	<u>Event</u>
6 July 2017	<i>Request received</i> Request for all recorded information from 1 Jan 2015 in connection with Prestwick Airport or Prestwick Spaceport which names or refers to a number of individuals/bodies including (but not limited to) Donald Trump, the Trump Organisation, Trump Turnberry, and the US Government.
27 July 2017	Case handler consulted Glasgow Prestwick Airport on document containing extracts of above information (19 pages) and proposed redactions, together with two documents where GPA had previously released information.
28 and 31 July 2017	Case handler consulted third parties whose correspondence would be released in response to the request ([redacted] , GPA; [redacted] , North Ayrshire Council; [redacted] , UK Space Agency).
1 August 2017	Case handler sent draft response to special advisers for comment, noting that it had taken longer than anticipated to find all of the information.

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1 August 2017	Mr Brown's private office sought update from case handler, who confirmed draft response was going to special advisers and that he would send it to the Cabinet Secretary once he had their comments.
2 August 2017	Case handler sent holding response to requester.
3 August 2017	<i>20 day deadline for responding to the request</i>
3 August 2017	Case handler sent draft response to Cabinet Secretary for clearance, explaining that special advisers had commented (but those comments are not on the file).
14 August 2017	Mr Brown's private office advised the case handler of 5 queries raised by Mr Brown.
15 August 2017	Case handler responded to Mr Brown's query and adjusted the response to take them into account.
30 August 2017	Mr Brown's private office confirmed he was now content for the response to be issued.
31 August 2017	<i>Response sent to requester</i>
6 September 2017	<i>Review sought by requester</i>
8 September 2017	Reviewer considered review request and decided two of the five points raised should be treated as a fresh FOI request.
15 September 2017	Case handler prepared draft request response to the two points.
18 September 2017	Reviewer circulated draft review response to business area and FOI Unit, outlining next steps to ensure the draft would be ready to send to special advisers on 21 September.
22 September 2017	FOI Unit responded to reviewer with advice on draft response.
25 to 27 September 2017	FOI Unit and reviewer adjusting draft response.
29 September 2017	Reviewer sent draft response to special advisers for comment.
3 October 2017	<i>Deadline for responding to review</i>
3 October 2017	PS/Special advisers advised that Stewart Maxwell was content for the response to go for Ministerial clearance.
3 October 2017	Reviewer sent draft response to Cabinet Secretary for clearance.
6 October 2017	Reviewer sent holding response to requester.
27 October 2017	Mr Brown had a telephone conversation with the reviewer about part of the request. His private office followed up with his comments on the remainder of the papers.
29 October 2017	Reviewer responded to Mr Brown's comments.
31 October 2017	Mr Brown's private office responded to the reviewer as follows: "Thanks for this – Mr Brown is now content but would like spads to re-check. He has also suggested that we have comms lines prepared for when this does go out."
31 October 2017	Reviewer re-sent draft response to special advisers.
3 November 2017	Special advisers' private office indicated that Stewart Maxwell thought two further points should be redacted.
4 November 2017	Reviewer confirmed to business area that Ministerial and special adviser "clearance" had been obtained, and gave instructions for the final redactions to be carried out.
8 November 2017	Reviewer asked case handler to supply a list of acronyms queried by the requester.

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8 November 2017	Response issued to requester.
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Potential matters for discussion

- Causes of the delays in responding to the original request
- Causes of the delays in responding to the review request

Conclusion

5. You are invited to note the information in this minute.

[redacted]
FOI Unit
[redacted]

15 May 2018

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

Liz Ditchburn
Mary McAllan
Roy Brannen
David Rogers
Ian Davidson
[redacted]
[redacted]
Liz Lloyd
Stuart Nicolson
Stewart Maxwell
John Somers
[redacted]
[redacted]