

[redacted]

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, the special advisers' 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/16/00432

Details of the case

Name of requester	[redacted], The Herald
Date of request	3 February 2016
Directorate	Chief Economist
Lead official	[redacted]
Stage concluded	Appeal (ordered to release information)

Timeline

<u>Date</u>	<u>Event</u>
3 February 2016	<i>Request received</i> Request for information held since 1 January 2013 by the Office of the Chief Economic Adviser in relation to the potential creation of a Scottish Monetary Authority.
2 March 2016	<i>20 day deadline for responding to the request</i>
8 March 2016	<i>Requester sought review of failure to respond</i>
9 March 2016	Reviewer acknowledged receipt of request for review.
9 March 2016	Reviewer asked policy area to carry out searches for information.
9 and 15 March 2016	Policy area replied providing two documents within scope.

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17 March 2016	FOI Unit provided advice on responding to a review of failure to respond, confirming that the approach taken would not set a precedent and advising on application of exemptions.
23 March 2016	Reviewer sought advice from FOI Unit on draft response.
29 March 2016	FOI Unit and reviewer agreed changes to the draft response.
29 March 2016	Reviewer sent draft response to special advisers for comment.
1 April 2016	PS/Special advisers informed reviewer that special advisers were content for the draft to go for Ministerial clearance.
1 April 2016	Reviewer sent draft response to DFM for clearance.
5 April 2016	DFM's private office indicated that DFM was content to clear the draft for release.
6 April 2016	Reviewer sent holding response to requester.
16 May 2016	FM's private office indicated that FM was content with the proposed release. [NB there is no indication on the file of when, how or why the draft was sent to FM's private office following DFM's clearance]
18 May 2016	<i>Requester appealed to Scottish Information Commissioner</i> Requester complained about failure to respond to request or to request for review.
13 June 2016	Note on tracker: "Still being considered by Spads. (13/6)"
15 June 2016	Commissioner notified SG that appeal had been validated. The appeal related only to the procedural issue of failure to respond. Submissions were requested by 28 June 2016.
17 June 2016	<i>Response sent to requester</i>
22 June 2016	<i>Response sent to Scottish Information Commissioner</i>
5 July 2016	Commissioner issued decision finding that the Scottish Ministers had failed to comply with FOISA by failing to respond within the timescales laid down in the legislation.
13 July 2016	<i>Requester appealed to Scottish Information Commissioner</i> Requester complained about whether all information in scope had been correctly identified, application of the section 30(c) exemption, and application of the public interest test.
26 July 2016	Commissioner notified SG that the appeal had been validated and requested that all of the withheld information be provided by 10 August.
8 August 2016	FOI Unit supplied the requested information to the Commissioner.
1 September 2016	Commissioner invited detailed response from SG, to be received by 15 September.
21 September 2016	FOI Unit submitted response to the Commissioner (following extension).
14 November 2016	Commissioner sent additional queries to SG, seeking further comments by 2 December.
5 December 2016	FOI Unit responded to further queries.
31 January 2017	Commissioner raised further query about redaction of personal data.
1 March 2017	<i>Decision issued by Commissioner</i> The Commissioner found that the Ministers had correctly told the requester that certain information was not held. However, they had wrongly withheld information as being out of scope, wrongly withheld the names of senior staff, and applied the section 30(c) exemption

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	when they were not entitled to. She required the Ministers to disclose that information.
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Potential matters for discussion

- Why the initial request appears to have been overlooked or not dealt with
- The clearance process adopted, including the involvement of the First Minister after DFM had cleared the response, and the apparent continuing involvement of special advisers after clearance from DFM

FOI/16/01736

Details of the case

Name of requester	[redacted], The Herald
Date of request	8 November 2016
Directorate	Economic Development
Lead official	Richard Rollison
Stage concluded	Request

Timeline

Note: the eRDM file for this case is empty, so the available information is taken solely from the FOI tracker.

<u>Date</u>	<u>Event</u>
8 November 2016	<i>Request received</i> Request for all information between Scottish Government, Sinofortone China Railway Group Ltd, China Railway No3 Engineering Group and [redacted] since 10 April 2016; all information between special advisers, Ministers and officials connected to the MoU.
7 December 2016	<i>20 day deadline for responding to the request</i>
11 August 2017	Note on tracker: "Back with Spads following meeting with Comms. (11/8)".
14 August 2017	Note on tracker: "SPADs and Comms working on handling plan. (14/8)".
18 August 2017	<i>Response sent to requester</i>

Potential matters for discussion

- Causes of the delay in responding to the request
- Issues with record keeping that make it difficult to understand how this case was handled

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FOI/17/00171

Details of the case

Name of requester	[redacted], BBC
Date of request	16 January 2017
Directorate	Health Performance and Delivery
Lead official	[redacted]
Stage concluded	Appeal (withdrawn following release of information in full)

Timeline

<u>Date</u>	<u>Event</u>
16 January 2017	<i>Request received</i> Request for information about correspondence between Scottish Government and [redacted] re NHS Scotland Productivity; also for same re his role on the Cabinet Secretary's 2020 Vision Advisory Board.
23 January 2017	Case handler consulted [redacted] about whether information should be disclosed.
23 to 25 January 2017	Case handler liaising with policy areas to collate information within scope of request.
31 January 2017	Case handler received response from [redacted] indicating he had nothing to add to his previous letter.
6 February 2017	Case handler sent request and collated documents to special advisers' private office as requested by Davie Hutchison.
7 February 2017	Special advisers' private office acknowledged receipt and asked for draft response.
8 February 2017	Case handler sent holding response to requester, commenting "it is taking longer than expected to deal with your request because we are checking with third parties."
8 February 2017	Case handler sent draft response to PS/Special advisers.
8 February 2017	PS/Special advisers sought clarification about which documents the case handler proposed to release.
10 February 2017	Case handler responded to PS/Special advisers.
16 February 2017	<i>20 day deadline for responding to the request</i>
5 March 2017	Case handler requested update from PS/Special advisers.
5 March 2017	PS/Special advisers confirmed that draft was still being considered by special advisers.
22 March 2017	Requester sought update.
23 March 2017	Case handler requested update from PS/Special advisers.
24 March 2017	Case handler advised requester that no update was forthcoming as she was awaiting input from colleagues.
3 April 2017	<i>Requester sought review of failure to respond</i>
4 April 2017	Case handler informed PS/Special advisers and FOI Unit of request for review.
4 April 2017	FOI Unit provided advice on how to deal with review request.
10 April 2017	Case handler acknowledged receipt of review request to requester.
11 April 2017	PS/Special advisers responded to case handler:

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	<p>"I have discussed with Davie and his view is that while this information is a couple of years old some of the material is still being actively considered in the formulation of SG policy in relation to the Health and Social Care Delivery Plan – and as such should be considered for exemption under s.29(1)(a). Grateful if you could reconsider the information you propose to release in light of Davie's comments.</p> <p>If you could then provide a revised response to reflect the above and that this is now a review etc. I will discuss again with Davie."</p>
12 April 2017	<p>Case handler responded to PS/Special advisers:</p> <p>[redacted]</p> <p>Case handler went on to set out detailed reasons for her views.</p>
13 April 2017	Case handler met PS/Special advisers and Davie Hutchison.
14 April 2017	<p>PS/Special advisers revised the draft response and indicated to the case handler:</p> <p>"Subject to the changes proposed being taken on board Davie is content for this to go to the Cabinet Secretary for clearance."</p>
18 April 2017	Case handler sent draft response as revised to Cabinet Secretary for clearance.
20 April 2017	Ms Robison's private office asked case handler to confirm two details.
2 May 2017	Case handler reverted to private office on return from leave.
2 May 2017	Case handler consulted FOI Unit on draft response as sent to Cabinet Secretary.
3 May 2017	PS/Cabinet Secretary confirmed that Ms Robison was content to approve the response.
4 and 5 May 2017	FOI Unit and case handler liaising on technical changes required to put letter in proper format.
11 May 2017	FOI Unit revised draft and advised that exemptions could not be applied in a blanket fashion as suggested. The covering letter was identified as a particular issue.
16 May 2017	<i>Response sent to requester</i>
23 May 2017	<p><i>Requester appealed to the Scottish Information Commissioner</i></p> <p>Requester complained about length of time taken to respond; failure to give advice and assistance; application of exemptions and public interest test.</p>
30 May 2017	Commissioner notified SG that the appeal had been validated and requested that all of the withheld information be provided by 13 June.
13 June 2017	FOI Unit supplied the requested information to the Commissioner, noting that information had been identified that had been withheld in error, and that the FOI Unit proposed to release it as soon as possible.
27 June 2017	Commissioner invited detailed response from SG, to be received by 11 July.
10 July 2017	FOI Unit confirmed to Commissioner that all information requested had been released to the requester.

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11 July 2017	Commissioner advised FOI Unit that the appeal had been withdrawn by the requester following release of the information.
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Potential matters for discussion

- Causes of the delays in responding throughout the case
- Reasons for the approach taken to the section 29(1)(a) exemption, and the reversal of that decision when appealed to the Commissioner

Conclusion

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

[redacted]
FOI Unit
[redacted]

17 May 2018

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

Liz Ditchburn
Paul Gray
Alan Hunter
Gary Gillespie
Mary McAllan
David Rogers
Ian Davidson
[redacted]
[redacted]
Liz Lloyd
Stuart Nicolson
John Somers
[redacted]