

Stewart Maxwell

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 two 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/16/02147

Details of the case

Name of requester	[redacted], Liberal Democrat researcher
Date of request	28 November 2016
Directorate	Economic Development
Lead official	[redacted]
Stage concluded	Appeal (withdrawn following release of further information)

Timeline

<u>Date</u>	<u>Event</u>
28 November 2016	<i>Request received</i> Request for correspondence with Highlands and Islands Enterprise re the Enterprise and Skills Review; and minutes of meetings and correspondence between SG the HIE Board about the Review.
21 December 2016	Case handler acknowledged the request and also sent a holding response advising that it was "taking longer than expected to deal with your request due to the need to engage a range of areas across the Scottish Government to determine what relevant information we hold". Case handler also noted that given the Christmas holiday period he hoped to respond in mid-January once individuals who might hold information had returned from leave.
28 December 2016	<i>20 day deadline for responding to the request</i>
26 January 2017	Requester sought update.

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30 January 2017	Case handler advised requester that response might be expected in early February once internal review and clearance was complete.
6 February 2017	Case handler sent draft response to special advisers for comment.
6 February 2017	Requester sought update, advising that he was minded to refer the matter to the Commissioner.
6 February 2017	Case handler sent further holding response to requester.
9 and 10 February 2017	Further correspondence between case handler and requester re timescales for response.
10 February 2017	Case handler met Stewart Maxwell to discuss case and subsequently revised draft response, which was resent to special advisers for comment.
14 February 2017	Stewart Maxwell suggested further information be withheld from the response.
15 February 2017	Case handler submitted further revised draft response to Stewart Maxwell.
17 February 2017	Stewart Maxwell confirmed he was content for draft response to go for Ministerial clearance.
17 February 2017	Case handler sent draft response to Mr Brown for clearance.
21 February 2017	Mr Brown's private office responded (on Tuesday) as follows: "Mr Brown is content with this response – I assume this won't be issued until Friday?"
21 February 2017	Requester sought update on timescales.
21 February 2017	<i>Requester sought review of failure to respond</i>
24 February 2017	<i>Response sent to requester</i>
27 February 2017	Case handler acknowledged request for review and sent draft review response to FOI Unit for comment.
28 February 2017	FOI Unit provided advice on how to respond to a request for a review of a failure to respond and revised the draft response.
1 March 2017	<i>Response sent to requester</i>
13 March 2017	<i>Requester appealed to Scottish Information Commissioner</i> Requester complained that public interest test had been misapplied, and that redaction was excessive. He also complained about the time taken to respond, including the clearance process.
24 March 2017	Commissioner notified SG that appeal had been validated and requested that Stage 1 appeal documentation be submitted by 7 April.
12 April 2017	FOI Unit provided Stage 1 appeal documentation to Commissioner.
9 May 2017	FOI Unit asked case handler for information to complete Stage 2 submission (detailed comments on the approach taken to handling the request) to the Commissioner, due by 23 May.
23 May 2017	FOI Unit advised that it had secured an extension to the deadline for the submission to the Commissioner (to 9 June).
7 to 16 June 2017	Business area liaising with Mr Brown's private office over the proposed submission to the Commissioner and on what additional information could be released to the requester.
16 June 2017	FOI Unit sent final submission to Commissioner noting that more information would be released.
20 June 2017	Case handler sent further response to requester releasing more information.
7 July 2017	Requester withdrew appeal to Commissioner.

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Potential matters for discussion

- Cause of the delay in responding to the request
- Reasons for requesting that the response be issued on a particular day
- Reasons for withholding information at the original request stage, given the extensive disclosure that took place on appeal

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 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.

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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

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
David Rogers
Ian Davidson
[redacted]
[redacted]
Liz Lloyd
Stuart Nicolson
Stewart Maxwell
John Somers
[redacted]
[redacted]