

# Decision Notice



Decision 130/2009 David Rule and the Scottish Ministers

Correspondence held by the First Minister's Office relating to named Scottish Government Agencies

Reference No: 200900666

Decision Date: 12 November 2009

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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) correspondence held by or on behalf of the First Minister's Office relating to Event Scotland, Historic Scotland or Visit Scotland. The Ministers responded by releasing several documents to Mr Rule, but advised him that the remainder of the information was exempt from disclosure under various exemptions in FOISA.

Following a review, the Ministers released further documents, but continued to withhold the remainder of the information. Mr Rule remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the Ministers disclosed additional information to Mr Rule, the Commissioner found that the Ministers had generally been entitled to withhold the remaining information. However, he found that they had incorrectly applied the exemption in section 29(1)(a) of the Freedom of Information (Scotland) Act 2002 to some of the remaining information and that they had incorrectly applied the public interest test to some of the information. He required the Ministers to disclose this information to Mr Rule.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(a) and (e)(ii) (Effect of exemptions); 14(2) (Vexatious or repeated requests); 15 (Duty to provide advice and assistance); 25(1) (Information otherwise accessible); 29(1)(a) (Formulation of Scottish Administration Policy etc); 30(b)(ii) and (c) (Prejudice to the effective conduct of public affairs); 38(1)(b), (2)(a)(i) and (b) (Personal information) and 41(a) (Communications with Her Majesty etc. and honours)

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions) (definition of personal data); Schedules 1 (The data protection principles) (the first principle) and 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6(1))

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix, together with the Schedule of Documents, forms part of this decision.



## Background

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1. On 30 October 2008, Mr Rule wrote to the Ministers requesting all correspondence between the First Minister's Office and Visit Scotland during the months of August and September of 2008; all correspondence regarding Visit Scotland to or from the First Minister, and all correspondence regarding Visit Scotland to or from his Special Advisor, Kevin Pringle, during the same two months. Mr Rule stated that the requests were to include internal correspondence within the First Minister's Office.
2. The following day, Mr Rule modified his request to the extent that where it made reference to "Visit Scotland" he wished this replaced with "either Visit Scotland, Historic Scotland or Event Scotland".
3. On 12 December 2008, Mr Rule wrote to the Ministers indicating that since they had not responded to his request, he now wished to request a review of their deemed refusal to provide him with the information asked for in his email of 31 October 2008.
4. The issue of the time taken by the Ministers to respond to Mr Rule's information request and subsequent request for review is addressed in Commissioner's *Decision 022/2009 Mr David Rule and the Scottish Ministers* and will not be discussed further in this decision.
5. The Ministers responded on 20 February 2009, and released some information but withheld other information under various exemptions in FOISA. They also cited section 14(2) of FOISA in relation to one particular document on the basis that this item had previously been released to Mr Rule in response to another information request he had made.
6. On 21 February 2009, Mr Rule emailed the Ministers requesting a review of this decision. In particular, Mr Rule challenged the Ministers' application of sections 14(2), 29(1)(a), 30(b)(ii) and (c), 33(2)(b), 38(1)(b) and 41(a) of FOISA and stated that he felt that the public interest was in favour of releasing the information.
7. The Ministers notified Mr Rule of the outcome of their review on 25 March 2009. Further information was released at this stage.
8. On 7 April 2009, 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.
9. 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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10. On 28 April 2009, 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 Mr Rule. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
11. The investigating officer contacted the Ministers on 1 June 2009, 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.
12. On 6 July 2009, the Ministers provided full submissions. They stated that they no longer wished to rely on section 33(2)(b) of FOISA in relation to any of the withheld information. They also withdrew their reliance on sections 30(b)(ii) and (c) and 38(1)(b) of FOISA in relation to some of the withheld information.
13. In their submissions, the Ministers also advised the Commissioner that they had released a further five documents to Mr Rule. However, after further investigation, the investigating officer ascertained that these five documents had not in fact been released to Mr Rule. After a delay of approximately six weeks, and after further contact with the investigating officer, the Ministers released these documents to Mr Rule.
14. Also, during subsequent discussions with the investigating officer in relation to one specific document, the Ministers withdrew their reliance on section 14(2) of FOISA and instead decided to apply the exemption in section 25(1) of FOISA.
15. Mr Rule was invited by the investigating officer to provide comments and submissions, and in particular his views on the public interest and his legitimate interest in accessing the information. Mr Rule provided full submissions to the Commissioner in a letter dated 11 August 2009. These are summarised, where appropriate, in the Commissioner's analysis and findings section below.

## Commissioner's analysis and findings

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16. 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.
17. The attached Schedule of Documents lists the documents which contain the information withheld from Mr Rule.



## Recent Court of Session Opinion

18. The Commissioner notes that Mr Rule asked the Ministers for correspondence. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA gives a right to information, not documents. However, the Court said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
19. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Rule and the Ministers that the Ministers questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Ministers have subsequently had with the Commissioner that the Ministers were unclear as to the information sought by Mr Rule.
20. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.

## Section 25(1) of FOISA

21. The Ministers applied this exemption to the information contained in document 21, an e-mail from Visit Scotland to the First Minister's Office relating to Edinburgh Castle.
22. In terms of section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. This exemption is not subject to the public interest test set down by section 2(1) of FOISA.
23. In this instance, the Ministers advised the Commissioner that this information had already been released to Mr Rule in response to a separate application which Mr Rule had made to the Commissioner.
24. Checks made on the Commissioner's behalf confirmed that the same information had indeed been disclosed to Mr Rule in connection with the application which led to *Decision 063/2009 Mr David Rule and Historic Scotland*.
25. The Commissioner therefore finds that Mr Rule can reasonably obtain the information contained in this document other than by making an information request for it and, as such, that the Ministers were correct in their application of section 25(1) of FOISA.



## Section 41(a) of FOISA

26. Under section 41(a) of FOISA, information is exempt if it relates to communications with Her Majesty, with other members of the Royal Family or with the Royal Household. This exemption is subject to the public interest test laid down in section 2(1)(b) of FOISA.
27. The Ministers applied this exemption to the information contained in documents 2, 4, 5, 9, 11 and 13, on the basis that the information relates to communications with members of the Royal Household. The Ministers also commented that such communications are subject to an expectation of confidence and that material which indicates the contents of discussions of meetings between the First Minister and members of the Royal Family are also subject to an expectation of confidentiality.
28. Having scrutinised these documents, the Commissioner accepts that the information contained in documents 2, 4, 5, 9, 11 and 13 relates to communications with either Her Majesty or another member of the Royal Family. The Commissioner considers that the Ministers' comments about the expectation of confidentiality are relevant to the consideration of the public interest test, rather than to the application of the exemption itself.

### *Public interest test*

29. Having concluded that the exemption in section 41(a) applies to the information contained in the documents listed above, the Commissioner must go on to consider the public interest test required by section 2(1)(b) of FOISA in relation to this information. This involves assessing whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information. Where the public interest in disclosing the information is equal to, or greater than, the public interest in withholding the information, he will order the information to be disclosed.
30. The Ministers argued that there was a strong public interest in maintaining relations between the Royal Household and the Scottish Government and in maintaining a private space to support this relationship. Mr Rule, on the other hand, sees no reason why the relationship between the Government and the Royal Household should not be open to public scrutiny.
31. After due consideration of the content of these documents and the circumstances of their being withheld, the Commissioner find little public interest in disclosing the information contained in these documents. He recognises the importance of maintaining relations between the Royal Household and the Government and, consequently, finds that the public interest in maintaining the exemption outweighs that in disclosure of the information. He therefore finds that the Ministers were entitled to uphold the application of this exemption.





## Section 38(1)(b) of FOISA

32. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles laid down in Schedule 1 to the DPA.
33. This exemption is not subject to the public interest test laid down by section 2(1)(b) of FOISA.
34. The Ministers have relied on section 38(1)(b) to withhold information contained in document 20 which they consider contains the personal data of a third party, on the grounds that disclosure of the information would contravene the first data protection principle.

### *Is the information personal data?*

35. "Personal data" is defined in section 1(1) of the DPA, which is reproduced in the Appendix to this decision.
36. The information considered under this exemption relates to an invitation from a member of the public to the First Minister to meet with him at a sporting event. The information was released but with the redaction of the name, home address, telephone numbers and work shift patterns of the member of the public.
37. The Commissioner is satisfied that the redacted information is the personal data of the member of the public in question for the purposes of section 1(1) of the DPA.

### *Would disclosure of the information breach the first data protection principle?*

38. The first data protection principle requires that personal data be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 (of the DPA) is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 (of the DPA) is also met. (The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and he is satisfied that the personal data in this case does not fall into this category. Therefore, it is not necessary to consider the conditions in Schedule 3 of the DPA in this particular case.)
39. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are inter-linked. If there is a specific condition which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
40. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he will then go on to consider whether the disclosure of this personal data would otherwise be fair and lawful. If no conditions can be met, he must find that the disclosure would breach the first data protection principle.



*Can any of the conditions in Schedule 2 of the DPA be met?*

41. The Ministers consider that of all of the conditions in Schedule 2 of the DPA, only the sixth may be potentially applicable in this case. The Commissioner agrees with this view.

*Condition 6(1)*

42. Condition 6(1) allows personal data to be processed (in this case, disclosed in response to Mr Rule's information request) if the processing is necessary for the purposes of legitimate interests pursued by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
43. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
- Is there a legitimate interest in obtaining this personal data?
  - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject(s)?
  - Even if the processing is necessary for the legitimate purposes of the applicant, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject(s)? This will involve a balancing exercise between the legitimate interests of the applicant and those of the data subjects. Only if (or to the extent that) the legitimate interests of the applicant outweigh those of the data subject(s) can the personal data be disclosed.

*Is there a legitimate interest?*

44. Mr. Rule was asked for his views on what legitimate interest he had in the disclosure of this personal data. He submitted that it was essential that he be able to identify the correspondent for the documentation to be understood properly.
45. The Ministers argued that Mr Rule does not have a legitimate interest in accessing the details of a member of the public who has written to the First Minister and that the correspondent would not expect his personal information to be released.
46. The Commissioner has considered the fact that Mr Rule's information request sought correspondence between the First Minister's Office and either Visit Scotland, Historic Scotland or Event Scotland. He notes that the information redacted from the document to which 38(1)(b) of FOISA has been applied is almost wholly contained in an email from a member of the public to the First Ministers Office. (The only exceptions being the other redactions of that member of the public's name which appear in other inter-departmental emails released to Mr Rule.)





47. The Commissioner does not accept that when Mr Rule lodged his information request he had any specific expectation of accessing information contained in private correspondence between a member of the public and the First Minister. It is the Commissioner's view that Mr Rule was anticipating receipt of information exchanged between the First Minister's Office and specific government agencies and that he does not have a legitimate interest in knowing the contact details, etc of the member of the public in question.
48. The Commissioner also considers that the correspondence can be read and understood without the necessity of identification of the correspondent.
49. The Commissioner is therefore satisfied that Condition 6 of Schedule 2 is not met in this case. He therefore finds that the Ministers were correct in their application of section 38(1)(b) of FOISA.

#### **Section 30(b)(ii) of FOISA**

50. In order for the Ministers to be able to rely on the exemption contained in section 30(b)(ii) of FOISA, they have to show that the disclosure of the information under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
51. The exemption in section 30(b)(ii) of FOISA is subject to the public interest test set out in section 2(1)(b) of FOISA..
52. The Ministers have applied this exemption to the information in document 3, which is an email from Historic Scotland to the First Minister concerning an application for planning permission to restore a listed building.
53. The Commissioner notes that at the date of Mr Rule's information request and subsequent review request, the issue of the planning permission was still under discussion, no final decision had been made and that views on the matter were being exchanged between the First Minister's Office and Historic Scotland. Both parties were involved in deliberations about a proposal regarding the planning application. The Commissioner therefore accepts that the information in question falls within the scope of the exemption.
54. Having concluded that the exemption in section 30(b)(ii) applies to the information, the Commissioner must go on to consider the public interest test.

#### *Public interest test*

55. The Ministers submitted that in order to discharge their duties fully, officials must be able to discuss issues and explore all options without fear that their views will be published prematurely. They argued that it was in the public interest to ensure that Ministers and officials have a private space within which they can debate sensitive issues freely and frankly, and that disclosing this information could prejudice similar discussions on such matters in the future.



56. Mr Rule's submissions on the public interest in respect of 30(b)(ii) of FOISA were, naturally, made without having seen the information withheld. However, in response to a précis of the arguments put forward by the Ministers, he submitted that there is a public interest in disclosing the information because it would lead to a better understanding of the relationship between the Scottish Government and its executive agencies. He argued that this outweighed the need to provide private space within which free and frank discussion can take place. Mr Rule stated that opening up the relationship to further public scrutiny would provide the greater public interest.
57. The Commissioner notes that what has been withheld are the views of Historic Scotland as presented to the Ministers following previous discussions between both parties. He has taken into account the sensitivity of the subject matter under discussion and is of the opinion that there is a public interest in withholding information while a decision of this nature is still being considered.
58. On the other hand the Commissioner appreciates that there will always be some public interest in understanding the relationship between the Ministers and executive agencies. He believes that public scrutiny of Governmental relationships supports transparency.
59. However, having considered fully the submissions on this issue from both parties, and taking account of the nature of the subject matter, the Commissioner finds that the public interest in disclosure of the information is outweighed by the public interest in maintaining the exemption. He therefore finds that the Ministers were entitled to uphold the exemption in section 30(b)(ii) of FOISA.

### **Section 30(c) of FOISA**

60. Section 30(c) applies where the disclosure of information would "otherwise" prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. The use of the word "otherwise" signifies that this exemption is to be used other than in the situations envisaged by the exemptions in section 30(a) and (b). However, section 30(c) remains a broad exemption, and the Commissioner expects any public authority citing it to show what specific harm would be caused to the conduct of public affairs by release of the information.
61. The exemption in section 30(c) is subject to the public interest test.
62. The Ministers have disclosed a redacted version of document 15 to Mr Rule, but have applied this exemption to the redacted information, which lists the names and contact details of those individuals approached by the Ministers for potential corporate sponsorship of the Homecoming Scotland 2009 event.



63. The Ministers have advised the Commissioner that the list in question does not necessarily reflect those who actually provided support, but merely those who were contacted. They believe that those who did not wish to be involved may be unfairly targeted on the basis that they had been approached, but failed to offer support. The Ministers stated that this could seriously damage relations between the Scottish Government and the business sector on future projects of mutual interest and thus would, or would be likely to, prejudice substantially the effective conduct of public affairs.
64. The Commissioner has considered whether the information in question falls within the scope of the exemption under 30(c) of FOISA and is satisfied that it does. He is also persuaded by the arguments put forward by the Ministers as to the level of harm that may occur as a result of damage to business relations by the release of the information. The Commissioner therefore accepts that the information in question falls within the scope of the exemption.
65. Having concluded that the exemption in section 30(c) applies to the information, the Commissioner must go on to consider the public interest test.

*Public interest test*

66. While agreeing that there may be a public interest in the understanding of who has provided backing for Homecoming 2009, the Ministers argued that there was greater public interest in protecting relations with external stakeholders which might otherwise be compromised by the release of the information. They submitted that the Government needs to be able to contact businesses and others to seek support for events and policies and that this is an essential part of the effective conduct of public affairs.
67. Mr Rule also accepted that there is a public interest in maintaining the ability of the Government to work with private business on issues of mutual interest, but submitted that it was also in the public interest for such collaboration to be open to public scrutiny. He argued that it is important that the Government acts ethically and broadly in line with public opinion as to how a Government should interact with private business, and that public scrutiny would lessen the risk of potential corruption.
68. The Commissioner notes that the release of the information would not necessarily equate to full public scrutiny of the Government's private business collaboration in this matter as the redacted list was not made up of those who actually became involved, but merely those who were approached. The Commissioner is of the view that evidence of collaboration or support could be obtained to some degree by examination of the sponsors' logos displayed at the event itself and those named in the event brochures.
69. Having weighed up the submissions put before him, the Commissioner is of the opinion that the corporate individuals approached in this case would not have expected to have their details released and that those who did not contribute may be subject to unfair targeting if their details were released. He accepts that the release of such information would inhibit the Ministers from drawing up such lists on future occasions.



70. The Commissioner therefore finds that the public interest in disclosing this information is outweighed by the public interest in maintaining the exemption. He therefore finds that the Ministers were entitled to uphold the exemption in section 30(c) of FOISA.

### **Section 29(1)(a) of FOISA**

71. In terms of section 29(1)(a) of FOISA, information is exempt information if it relates to the formulation or development of government policy. Again, this exemption is subject to the public interest test.
72. For information to fall within the exemption in section 29(1)(a), it must *relate to* government policy. The Commissioner considers that this can be defined as the development of options and priorities for the Scottish Ministers, who will subsequently determine which options should be translated into political action and when. The formulation of government policy suggests the early stages of the policy process where options are considered, risks are identified, consultation takes place and recommendations and submissions are presented to Scottish Ministers. Development suggests the processes involved in improving upon or amending already existing policy and could involve the piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
73. This exemption has been applied to the information contained in documents 8, 14, 16, 17, 18 and 19. However, as the information contained in documents 16, 17 and 18 is wholly duplicated within document 14, the Commissioner will not consider this separately.
74. Document 8 pertains to information concerning Edinburgh World Heritage, document 19 pertains to information concerning the Rugby World Cup 2015/2019 and document 14 pertains to information concerning the Rugby World Cup 2015/2019 and to Homecoming Scotland 2009.
75. The Ministers submitted that, as the information contained in document 8 refers to the development of policy in respect of the World Heritage site and the purpose and future role of Edinburgh World Heritage, the information is exempt under section 29(1)(a).
76. They also submitted that, in respect of the information pertaining to the Rugby World Cup 2015/2019, this information is also exempt under section 29(1)(a) due to the fact that it relates to bids for the Rugby World Cup and decision-making about co-bids. The Ministers also submitted that the information which has been withheld relates to discussions on ongoing policy issues which are incomplete and will undergo many changes in policy prior to 2015.
77. The Commissioner will now consider whether the information contained in documents 8, 14 and 19 falls within the scope of the exemption under 29(1)(a) of FOISA.



*Document 14 relating to Homecoming Scotland*

78. The Commissioner notes that no arguments were put forward by the Ministers specifically in relation to the information in document 14 pertaining to Homecoming Scotland. The information relates to proposed television advertising for the Homecoming event. The Commissioner does not consider that the information contained in the email of 13 August 2008 and in the email correspondence leading up to this relates to the formulation or development of government policy. As such, he finds that the information is not exempt under 29(1)(a) of FOISA and should be disclosed to Mr Rule.

*Documents 14 and 19 relating to the Rugby World Cup and document 8 relating to Edinburgh World Heritage*

79. The Commissioner is, however, satisfied that the remainder of the information contained in document 14 and the information contained in documents 8 and 19 is exempt under section 29(1)(a) of FOISA. In coming to this conclusion, he has taken account of the fact that the proposed Rugby World Cup bid was clearly supported by the Scottish Government.
80. He also notes that a policy decision on the Edinburgh World Heritage discussions had not been taken at the time of Mr Rule's information request or his request for review. The Commissioner is of the view that the information contained in the World Heritage document related to ongoing policy formulation and was discussed in anticipation of a UNESCO visit to Edinburgh in November 2008 and a subsequent report by UNESCO as a result of that visit, which was anticipated in early 2009.
81. He will therefore go on to consider the public interest test in respect of the information pertaining to Edinburgh World Heritage and the Rugby World Cup 2015/2019.

*Public interest test*

82. While they acknowledged that there is a public interest in understanding how policy on these issues has been developed, the Ministers argued that there is a greater public interest in ensuring that Ministers and officials have a private space in which to consider fully all advice and options, especially with regard to the future plans for heritage sites, before their conclusions are made public.
83. The Ministers reiterated that ongoing policy issues in relation to the Rugby World Cup would undergo many amendments prior to the event taking place. They argued that the premature release of policy decisions compromises the position of Ministers and officials in being able to fully assess all relevant issues and reach considered conclusions.





84. Mr Rule's submissions on the public interest in respect of 29(1)(a) of FOISA were, again, made without his having sight of the withheld information. However, in response to a précis of the arguments put forward by the Ministers, he submitted that the arguments used by the Ministers are of a general nature and that the policies under discussion are not particularly novel and are in line with policies applied elsewhere. He argued that it is not justifiable to say that releasing the information would be premature and that the public interest would be better served by the release of the information.
85. The Commissioner has concluded, in respect of the information contained in document 8 relating to Edinburgh World Heritage, that the Ministers required time and space to develop the policy and consider the options open to them. He is of the view that the public interest in disclosure of the information contained in this document is outweighed by the public interest in maintaining the exemption.
86. He therefore finds that the Ministers were entitled to uphold the exemption in section 29(1)(a) of FOISA in respect of the information contained in document 8.
87. In respect of documents 14 and 19, pertaining to the Rugby World Cup 2015/2019, the Commissioner considers that the following facts are relevant:
- The information in question pertains to discussions surrounding the submission of a *notification of intention to bid* by Scotland to host the World Cup. The documents did not contain any information about the facts and figures of an actual bid, because a bid had not been drawn up at the time in question.
  - The deadline for submission of intentions to bid was 15 August 2008, with a final deadline of 30 September 2008 for Scotland to clarify if it intended to make a singular bid or a joint bid with one or other of the home nations. On 1 October 2008 the finalised details of Scotland's intention to bid were made public in the media.
  - The International Rugby Board press release of 15 August 2009 made public all of the received intentions to bid which had been received.
  - Mr Rule's information request was made on 30 October 2008 and his request for review was made on 21 February 2009.

(By way of background information the Commissioner notes that the actual tendering process was completed on 8 May 2009 but that Scotland withdrew from the process in April 2009.)

88. From the timelines noted above, it is apparent to the Commissioner that the conclusion of the deliberations around the proposed intent to bid had already been reached, and made public, by the time Mr Rule made his information request. The Commissioner has taken account of the fact that there were several articles in the media which revealed information pertaining to the intended bid, for example, on 19 September 2008:  
<http://www.telegraph.co.uk/sport/rugbyunion/international/scotland/2991023/Scotland-eye-joint-bid-for-Rugby-World-Cup-in-2015---Rugby-Union.html> and on 1 October 2008:  
<http://thescotsman.scotsman.com/rugby/SRU-confirm-Rugby-World-Cup.4548324.jp>





89. The Commissioner considers that there is nothing in the information which has been withheld which could be considered to be controversial generally and, while there may be some degree of sensitivity in the behind the scenes discussions, on balance, the public interest favours release.
90. It is therefore the considered conclusion of the Commissioner that the public interest in withholding the information contained in documents 14 and 19 relating to the Rugby World Cup 2015/2019 is outweighed by the public interest in disclosure.

*Conclusions under 29(1)(a) of FOISA*

91. The Commissioner finds that the Ministers were correct to apply the exemption in section 29(1)(a) of FOISA to the information contained in documents 8, 19 and part of document 14. However they incorrectly applied this exemption to part of the information contained in document 14. The Commissioner also finds, having considered the public interest test, that the Ministers were not entitled to uphold the exemption in relation to the information contained in document 19 and in part of document 14. The Commissioner now requires this information to be disclosed to Mr Rule.

## **DECISION**

The Commissioner finds that the Scottish Ministers (the Ministers) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Rule. However, as noted above, he finds that the Ministers were not entitled to withhold information in part of document 14 under the exemption in section 29(1)(a) of FOISA, and that they misapplied the public interest test in relation to the information in document in 19 and in part of document 14. The Ministers therefore failed to comply with Part 1 of FOISA in these respects and, in particular, with section 1(1).

The Commissioner therefore requires the Ministers to disclose to Mr Rule the information contained in the documents detailed in the attached Schedule of Documents by 8 January 2010.



## Appeal

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Should either Mr Rule or the 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**12 November 2009**



## 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.

(...)

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

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

(a) the provision does not confer absolute exemption; and

(b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection (1), the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption:

(a) section 25;

(...)

(e) in subsection (1) of section 38 –

(...)

(ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



**14 Vexatious or repeated requests**

(...)

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

**15 Duty to provide advice and assistance**

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

**25 Information otherwise accessible**

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

**29 Formulation of Scottish Administration policy etc.**

- (1) Information held by the Scottish Administration is exempt information if it relates to-
- (a) the formulation or development of government policy;

**30 Prejudice to effective conduct of public affairs**

Information is exempt information if its disclosure under this Act-

(...)

- (b) would, or would be likely to, inhibit substantially-
- (i) the free and frank provision of advice; or
- (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.



### 38 Personal information

- (1) Information is exempt information if it constitutes-
- (...) (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
  - (...)
- (2) The first condition is-
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
    - (i) any of the data protection principles; or
    - (...)
  - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.
- (...)

### 41 Communications with Her Majesty etc. and honours

Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household; or
- (...)



## Data Protection Act 1998

### 1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

(...)

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

(...)

### Schedule 1 – The data protection principles

#### Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

(...)

#### Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

(...)

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(...)





## Schedule of Documents

Doc. no.	Date	Description	Exemptions applied	Exemptions Upheld? Y/N	Public interest in favour of disclosure?	Release or withhold
2	26/09/08	E-mail correspondence between Historic Scotland and the FM's Office re: Princes Trust.	41(a) redactions	yes	no	withhold
3	24/09/08	E-mail correspondence between Historic Scotland and the FM re: Princes Trust.	30(b)(ii)	yes	no	withhold
4	24/09/08	E-mail correspondence between Historic Scotland and the FM 's Office re: meeting with the Duke of Rothesay.	41(a)	yes	no	withhold
5	23/09/08	E-mail correspondence between Historic Scotland and the FM's Office re: meeting with the Duke of Rothesay.	41(a)	yes	no	withhold
8	04/09/08	Submission from Historic Scotland to FM re: Edinburgh World Heritage.	29(1)(a)	yes	no	withhold
9	02/09/08	Covering e-mail and draft letter from Historic Scotland to FM's Office re: North Highland Initiative.	41(a) redactions	yes	no	withhold
11	27/08/08	Covering e-mail and briefing note from Historic Scotland to FM's Office re: North Highland Initiative.	41(a) redactions	yes	no	withhold
13	18/09/08	E-mail correspondence between Event Scotland and the FM's Office re: Homecoming 2009.	41(a)	yes	no	withhold
14	24/08/08	(i) E-mail correspondence between Event Scotland and the FM's Office re: the Rugby World Cup 2015/19	29(1)(a)	yes	yes	release
	13/08/08	(ii) E-mail correspondence between Event Scotland and the FM's Office re: Homecoming Scotland 2009	29(1)(a)	no	n/a	release

Decision 130/2009  
Mr David Rule  
and the Scottish Minsters



15	15/08/08	E-mail correspondence between Event Scotland and the FM's Office re: potential corporate contacts for Homecoming Scotland 2009	30(c) redactions	yes	no	withhold
16	14/08/08	E-mail correspondence from Event Scotland to FM's Office on the Rugby World Cup 2015/19.	29(1)(a)	The contents of this doc. are wholly duplicated in doc. 14.	n/a	n/a
17	13/08/08	E-mail correspondence from Event Scotland to FM's Office on the Rugby World Cup 2015/19.	29(1)(a)	Contents wholly duplicated in doc. 14.	n/a	n/a
18	11/08/08	E-mail correspondence from Event Scotland to FM's Office on the Rugby World Cup 2015/19.	29(1)(a)	Contents wholly duplicated in doc. 14	n/a	n/a
19	07/08/08	E-mail correspondence from Event Scotland to FM re: the Rugby World Cup 2015/2019.	29(1)(a)	yes	yes	release
20	30/09/08	E-mail correspondence from FM's Office to Event Scotland re: invitation to meet from private individual during a sporting event.	38(1)(b)	yes	n/a	withhold
21	19/08/08	E-mail correspondence from Visit Scotland to FM's Office re: Edinburgh Castle	25(1)	yes	n/a	withhold