

# Decision Notice



Decision 158/2012 Animal Concern and the Scottish Ministers

Press advertising of the arrival of giant pandas at Edinburgh Zoo

Reference No: 201200431

Decision Date: 25 September 2012

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**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

Animal Concern asked the Scottish Ministers (the Ministers) for information on their press advertising surrounding the arrival of the giant pandas at Edinburgh Zoo. Some information was provided, but Animal Concern did not believe that the Ministers had provided it with all the information the Ministers held. Following an investigation, the Commissioner found that the Ministers had failed to identify, locate and provide all the relevant information they held when dealing with Animal Concern's request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1)(a) (Time for compliance)

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 30 November 2011, Animal Concern wrote to the Ministers requesting the following information in relation to an advertisement which appeared on 29 November 2011 in the *Dumbarton & Vale of Leven Reporter*, placed on behalf of the Scottish Government and relating to the arrival of the giant pandas at Edinburgh Zoo:
  - i. What publications has/will this (or versions of this) advertisement be placed in?
  - ii. How much has/will the whole exercise cost?
  - iii. Who will pay for the advertisements and will Edinburgh Zoo contribute to the costs?
  - iv. Who within the Scottish Government initiated this advertising campaign?
  - v. Who within the Scottish Government authorised this advertising campaign?
  - vi. In the first paragraph of the advert it is stated: “...*the Chinese are gifting two giant pandas to live in Scotland ...*” Is this correct or, as has been reported, are the animals in fact being leased from China at a cost of up to £1.4 million per year?
  - vii. If the animals are in fact being paid for, how much is the Scottish Government contributing to that cost?



2. The Ministers responded on 1 February 2012, providing some information to Animal Concern.
3. On 2 February 2012, Animal Concern wrote to the Ministers requesting a review of their response, stating it was dissatisfied with the information provided in response to parts i, iii, iv, v and vi of its request.
4. The Ministers notified Animal Concern of the outcome of their review on 24 February 2012 and provided further information to Animal Concern.
5. On 5 March 2012, Animal Concern wrote to the Commissioner, stating that it was dissatisfied with the outcome of the Ministers' review, highlighting the fact that the initial response was made outwith the requisite timescales, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Animal Concern 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. The case was then allocated to an investigating officer.

## Investigation

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7. On being asked by the investigating officer to clarify its areas of dissatisfaction, Animal Concern indicated that it was content with the responses provided in relation to parts i and vi of its request. However, in respect of parts iii, iv and v, it still sought information as to which Ministers, departments or civil servants had initiated and authorised the advertising, and as to who would pay for it. Animal Concern stated that it was not satisfied with the Ministers' response that marketing proposals were included in discussions with a Panda Steering Group and in Ministerial briefings, and that payment for the adverts (by the Scottish Government) was authorised as part of the Scottish Government's overarching strategy surrounding the pandas' arrival.
8. On 20 March 2012, the Ministers were notified that an application had been received from Animal Concern. They were invited to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, they were asked to comment on the specific areas of dissatisfaction raised by Animal Concern.
9. The Ministers provided their initial submissions and responses to the investigating officer's questions on 17 May 2012. Following further discussions, they agreed to provide Animal Concern with the information contained in these submissions which fell within the scope of the request but which had not already been disclosed. This additional information clarified that the Scottish Government alone had paid for the advertising and also provided a breakdown of the parties represented on the Panda Steering Group.



10. On receiving this additional information, Animal Concern indicated that it remained dissatisfied with the Ministers' responses to parts iv and v of its request and wanted the Ministers to disclose which specific Ministers and/or civil servants had initiated and authorised the advertising.
11. In order to ascertain whether they might contain any information identifying specific Ministers or civil servants, the investigating officer asked the Ministers to provide her with copies of the above mentioned Ministerial briefings and Panda Steering Group minutes, and also with Communications & Marketing Sub-Group minutes. On reviewing these documents, the investigating officer did not find any information identifying particular Ministers or civil servants as initiating or authorising the advertising.
12. The relevant submissions received from both the Ministers and Animal Concern will be considered fully in the Commissioner's analysis and findings below.

## **Commissioner's analysis and findings**

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13. In coming to a decision on this matter, the Commissioner has considered the submissions made to her by both Animal Concern and the Ministers and is satisfied that no matter of relevance has been overlooked.

### **Section 1(1) of FOISA – General entitlement**

14. Section 1(1) of FOISA creates a general entitlement to access information held by a Scottish public authority (subject to the application of any exemptions in Part 2 of FOISA, and any other relevant provision in Part 1).
15. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request and provide it to the applicant, unless it is exempt from disclosure under Part 2 of FOISA, or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
16. In this case, when prompted by a letter from the investigating officer during the investigation, the Ministers accepted that they held further information falling within the terms of Animal Concern's request, which had not previously been identified or supplied to Animal Concern (as noted in paragraph 9 above).
17. Since it is clear that the Ministers failed to identify and supply this information to Animal Concern until after it had applied to the Commissioner, the Commissioner must find that the Ministers failed to comply with section 1(1) of FOISA when responding to Animal Concern's information request.



**Do the Ministers hold further relevant information?**

18. During the course of the investigation, it was drawn to the Ministers' attention that their response in respect of who paid for the adverts (*"payment for the adverts was authorised as part of the Scottish Government's overarching strategy surrounding the pandas' arrival"*) merely implied that the adverts were paid for by the Ministers, but did not confirm whether the Ministers were solely responsible for payment or whether other parties were also involved.
19. It was also highlighted to the Ministers that their response in respect of who initiated and approved the adverts (*"marketing was included in the overarching strategy surrounding the arrival of the pandas in Scotland. Proposals were included in the discussions with the Steering Group and Ministerial Briefings"*) did not clearly indicate which groups or individuals initiated and/or approved the adverts.
20. In response to the above points, the Ministers confirmed (i) that the Scottish Government alone had paid for the advertising and (ii) that the Steering Group contained representatives from the Scottish Government, the Scotland Office, Edinburgh Zoo and the Foreign and Commonwealth Office. Following further discussions, the Ministers stated that they were content for this additional information to be provided to Animal Concern and that they did not wish to apply any exemptions in Part 2 of FOISA to it.
21. The Commissioner notes that Animal Concern was provided with this additional information, but still wanted to know which Ministers or civil servants from the Steering Group had initiated and authorised the advertising. Therefore, in order to ascertain whether any further information was held which would address this point, the Ministers were asked to provide the Commissioner with copies of the minutes of the Steering Group meetings, the relevant Ministerial briefings and the minutes of the Communications & Marketing Sub-Group.
22. Having considered all of the information provided, which covered discussions surrounding the arrival of the pandas, the Commissioner did not identify any information which specified any individuals as having authorised or initiated the advertising.
23. The Commissioner is therefore of the view that it is unlikely that any further documents are held by the Ministers that would shed any light on which Ministers or civil servants (if any) authorised or initiated the advertising.
24. The Commissioner therefore concludes, that, on the balance of probabilities, the Ministers do not (and did not, at the time they dealt with Animal Concern's request) hold any further information falling within the remit of Animal Concern's request, and that all of the documents which may have provided an insight into the panda advertising campaign have been provided to her by the Ministers. In the circumstances, she is satisfied that all of the information held by the Ministers which falls within the remit of Animal Concern's request has now been provided to Animal Concern.



### Failure to respond

25. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
26. In this case, the Ministers responded to the request of 30 November 2011 on 24 February 2012, and therefore it took longer than the requisite 20 working days for a response to be issued.
27. The Commissioner notes that the Ministers apologised to Animal Concern in their review outcome letter, explaining that the oversight was due to an official's failure to register the request on the internal FOI system owing to confusion arising between the request of 30 November 2011 and another information request made by Animal Concern on a similar subject (which was entered into the system).
28. Notwithstanding this explanation and apology, the Commissioner must find that the Ministers failed to comply with section 10(1) of FOISA in responding to the request of 30 November 2011.
29. Given that the Ministers provided a response to the request on 24 February 2012, the Commissioner does not require them to take any action in relation to this breach in response to Animal Concern's application.

### DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Animal Concern by failing to identify, locate and provide all of the information they held which fell within the scope of Animal Concern's request and by failing to comply with Animal Concern's request within the 20 working days required by regulation 10(1) of FOISA.

Given that the Commissioner is now satisfied with the steps taken by the Ministers to identify, locate and provide the relevant information, she does not require the Ministers to take any further action in respect of the failures identified, in response to Animal Concern's application.



## Appeal

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Should either Animal Concern 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**  
**25 September 2012**



## 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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##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

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