

# Decision Notice



Decision 195/2012 Mr Andrew Sharp and the Scottish Ministers

Breakdown of expenses for foreign travel

Reference No: 201201601

Decision Date: 29 November 2012

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**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

Mr Sharp requested from the Scottish Ministers (the Ministers) an itemised breakdown of all expenses incurred by Alex Salmond and Fiona Hyslop for foreign travel from 2008-2012. The Ministers considered that some of this information was already available on their website and that providing a more detailed breakdown would cost in excess of £600: therefore, they were not obliged to comply with the request. Following an investigation, the Commissioner accepted that the Ministers were entitled to refuse to comply with the request on the grounds that the cost of responding would exceed £600. However, the Commissioner also concluded that the Ministers failed to provide reasonable advice and assistance in responding to Mr Sharp's request and failed to respond to his requirement for review within the required timescale.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1)(Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 21(1) (Review by Scottish public authority)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

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 5 June 2012, Mr Sharp wrote to the Ministers requesting an itemised breakdown of all expenses incurred by Alex Salmond and Fiona Hyslop for foreign travel on a yearly basis from 2008 to 2012 inclusive.
2. The Ministers responded on 4 July 2012, advising Mr Sharp that details of Ministerial travel from July 1999 to March 2011 were published on their website and providing him with a link to this information. The Ministers also advised that information relating to visits post March 2011 was exempt under section 27(1) of FOISA, claiming that the information relating to these trips would be published on their website within 12 weeks.



3. On 5 July 2012, Mr Sharp wrote to the Ministers requesting a review of their decision. He did not believe that he had been provided with all the information he had requested. He stated that he was seeking an itemised breakdown of every pound spent, not just the total sums.
4. Following an application to the Commissioner, for a failure to respond within the statutory timeframes, the Ministers notified Mr Sharp of the outcome of their review on 22 August 2012. The Ministers confirmed their original decision, but advised that to provide the itemised breakdown Mr Sharp was seeking would exceed £600: consequently, section 12(1) of FOISA applied. This response also apologised for the time taken to respond to Mr Sharp's review request.
5. On 22 August 2012, Mr Sharp wrote to the Commissioner, stating that he was dissatisfied with the outcome of Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Sharp 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 23 August 2012, the Ministers were notified in writing that an application had been received from Mr Sharp and were given 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. These questions focused on the cost of compliance with the request, the provision of advice and assistance, and technical aspects of the handling of Mr Sharp's request.
8. The relevant submissions received from both the Ministers and Mr Sharp will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Sharp and the Ministers and is satisfied that no matter of relevance has been overlooked.
10. Mr Sharp's application raised concerns about the time taken to respond to his request and he made clear that did not accept that it would cost the Ministers in excess of £600 to respond to his request.



## Section 12(1) – excessive cost of compliance

11. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fee Regulations. Consequently, the Commissioner has no power to require the release of information should she find that the cost of responding to a request for that information would exceed this sum.
12. The projected costs the authority can take into account in relation to this request for information are, according to regulation 3 of the Fee Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information in accordance with Part 1 of FOISA. The authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
13. Mr Sharp was advised that some of the information he sought was already available from the Scottish Government's website (<http://www.scotland.gov.uk/About/People/14944/travel/visitsoverseas>). The Commissioner notes that this link provides the following details for each visit:
  - The identity of the Minister(s)
  - The dates of the visit
  - The location
  - The event
  - The number of officials accompanying
  - The total cost of each Minister's travel and subsistence.
14. Mr Sharp made clear in his correspondence that he sought a more detailed "pound for pound" breakdown of these costs, to determine, for example, whether these costs were incurred using the cheapest hotels or "top of the range" hotels.

### *The Ministers' submissions*

15. To support their argument that the costs of the providing this information would exceed £600, the Ministers advised that they did not hold the information in a central location: while some of the information was held in electronic form, some was only kept on paper.
16. The Ministers explained that Cabinet Secretaries and Ministers claimed expenses incurred for business reasons, representing Scotland's interests. They stated that robust rules and audit processes were designed to ensure that they made the most efficient and cost-effective travel and accommodation arrangements.



17. The Ministers submitted that the costs in handling Mr Sharp's request was estimated on the basis of aligning each foreign trip with the travel and subsistence claims from separate systems, for the specific Ministers involved.
18. The Ministers explained that staff recorded details of Ministerial foreign travel on an Engagement Database, from which a report would require to be run on all Ministerial foreign travel. This would return the date, flight/rail costs, origin and destination. A staff member, responsible for Travel and Subsistence (T&S) claims, would then be required to run a report on all foreign travel (which would list everyone who had travelled). They stated that Ministerial claim forms were only held manually.
19. According to the Ministers, these manual records contain claims plus a mixture of rejected claims (due to mistakes, unidentifiable codes etc.) from the online system. Further searches of these records would be required by the T&S team to identify the batch of payments and then search for each claim (not necessarily in serial number order), read through each claim and note the details. Further searches would be required to identify the travel and subsistence costs for each trip and determine how this was held. The Ministers explained that, for some trips, the travel and subsistence costs were paid using charge cards provided for this purposes, while for others payment was made in cash and then reclaimed.
20. When questioned further by the investigating officer about how this information was collated and held, the Ministers explained that Ministers' claims were provided in paper only. Once the claim had been checked, it was keyed into the system for payment and then paid by BACS. The claim was then filed in a folder for the relevant Minister. They also explained that claims could be submitted and dealt with weeks or months after the relevant trip.
21. The Ministers also explained that expenditure on charge cards (held on a different system) would include expenditure with regard to accompanying officials as well as the Minister. To address this, they would require to identify and contact the relevant Ministerial office, to identify which individuals accompanied the Minister, and whether there were any expenses using the charge card with reference to any of those officials, before they could determine if the expenditure related to the Minister only. The Ministers argued that they would also be required to access archived data from previous charge card providers, as there had been different providers in the time period covered by Mr Sharp's request.
22. In addition to this, the Ministers advised that they would be required to check to see if hotels and/or travel were booked through Exptel, the contractors used to book accommodation and travel throughout the Scottish Government. Ministers could book through this company or have officials in their Ministerial office book it for them, so in order to determine if a travel booking had been made on behalf of a Minister, all staff who had worked in the Ministers' office would have to be identified and their names searched for through the Exptel booking system, after which it would be necessary to determine whether the travel was for themselves or the Minister.
23. The Ministers submitted that both the charge card and Exptel systems would have to be interrogated, but this would not include any travel and subsistence paid or processed outwith the T&S team, such as travel or accommodation with regard to UK parliamentary business.



24. Some costs would also be covered by the Foreign and Commonwealth Office: this information was held separately and would have to be searched and extracted. For these visits, the costs for accompanying staff would also be recorded on the same records, and this information would have to be separated out from the Ministers' specific costs in order to provide the detail requested by Mr Sharp.
25. The Ministers calculated that there were 10 visits undertaken by Fiona Hyslop between 2008 and November 2011 (when published records stopped) and 15 visits by Mr Salmond in the same period. The information for the period between November 2011 and Mr Sharp's request would also require to be collated. As the Ministers were unable to state how many more trips would be identified in that period, these were not added to the estimated costing provided.
26. The Ministers submitted that to locate the claims in question would involve 30 minutes of staff time per trip at a rate of £15/hr, equating to £187.50. For identifying and separating the travel and subsistence costs specific to the identified Ministers from all systems and removing any costs paid for by the Foreign and Commonwealth Office, the Ministers estimate would take a member of staff two hours per trip (25) at £15/hour, equating to £750.
27. The Ministers explained that T&S team staff would be the only ones available to do the work, at the maximum rate of £15 per hour. They also submitted that the results of these searches would then require to be cross-checked by a more senior member of staff. A further pound by pound breakdown (the information was not recorded or collated on this basis) would require further extraction of the information identified: as the work described above would already breach the costs limit, the Ministers did not provide estimates of this additional work.
28. When questioned whether it would be possible to provide Mr Sharp with the information for a period of one year only, the Ministers stated that the same work would require to be undertaken for all the time periods identified by Mr Sharp, given the nature of the searches described. Therefore, responding would breach the cost limit even if the request were broken down into four separate time periods. The Ministers also provided samples of the types of records involved.
29. The Commissioner has considered carefully the detailed nature of the request made by Mr Sharp and has taken into account the manner in which this information is recorded, collated and held by the Ministers. In this instance, the Commissioner is satisfied that, in order to fully comply with this request, the cost of doing so would exceed the cost threshold of £600. Consequently, the Commissioner is satisfied that the Ministers were entitled to rely on section 12(1) of FOISA in relation to this request.





## Section 15 of FOISA – Duty to provide advice and assistance

30. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. Examples of such advice and assistance given in the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 include, in cases where section 12(1) applies, "consider[ing] what information could be provided below the cost limit, and suggest[ing] how the applicant may wish to narrow the scope of their request accordingly" (see paragraph 1.9)<sup>1</sup>.
31. The Ministers stated that they had already provided Mr Sharp with the Ministerial foreign travel details published on their website, which they advised was collated and published on a regular basis. They also explained that Mr Sharp had already been provided with information regarding foreign trips by Ms Hyslop, in response to requests covering the period from December 2009 to April 2010 and in respect of two trips in 2012: they acknowledged that they should have referred to the earlier provision of information in responding to his current request.
32. The Minister state that in informing Mr Sharp that this current request would breach the cost limit, they were aware that he already had precedent to determine how he could formulate his requests so that they fall within that cost limit.
33. The Commissioner accepts that Mr Sharp made previous requests to the Ministers for similar information, which could be provided without breaching the cost threshold. However, the Commissioner does not accept that this precedent fulfilled the Ministers' duties in terms of section 15. From the correspondence exchanged between Mr Sharp and the Ministers, the Commissioner notes that he was not provided with details of how this cost was arrived at, or how the information was collated and held by the Ministers. Consequently, the Commissioner does not consider that he was provided with an adequate explanation as to why his request could not be complied with. In the absence of such an explanation, the Commissioner does not accept that Mr Sharp was in a position to understand and accept the Ministers' application of section 12(1), or to restructure his request so that the cost limit did not apply.
34. Consequently, the Commissioner has concluded that the Ministers failed to comply fully with their duty under section 15(1) of FOISA. The Commissioner does not require any action in respect to this failure, as further explanation as to how these costs were arrived at is provided to Mr Sharp in this decision notice (see above).

## Timescales

35. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt to comply with a requirement for review, subject to exceptions which are not relevant to this case.

<sup>1</sup> <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



36. As the Ministers did not provide a response to Mr Sharp's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
37. The Commissioner notes that the Ministers acknowledged this failure and apologised for it when responding to Mr Sharp's requirement for review. In the circumstances, she does not require any further action to be taken.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Sharp.

The Commissioner finds that by applying section 12(1) of FOISA to Mr Sharp's request, the Ministers complied with Part 1.

However, in failing to provide adequate advice and assistance to Mr Sharp, the Minister failed to comply with section 15(1) of FOISA. In addition, the Ministers failed to respond to Mr Sharp's requirement for review within the timescale set out in section 21(1) of FOISA.

Given that the Ministers have now responded to Mr Sharp's requirement for review and further details of the costs involved in handling his request are contained within this decision notice, the Commissioner does not require the Ministers to take any action in respect of these failures in response to Mr Sharp's application.

## Appeal

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Should either Mr Sharp 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**  
**29 November 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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- (6) This section is subject to sections 2, 9, 12 and 14.

##### 12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

##### 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.

...

##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...



## Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

### 3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
  - (a) no account shall be taken of costs incurred in determining-
    - (i) whether the authority holds the information specified in the request; or
    - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
  - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

### 5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.