

# Decision Notice



Decision 055/2012 Mr Tom Gordon of the Sunday Herald and the Scottish Ministers

Overnight guests at Bute House

Reference No: 201102389  
Decision Date: 29 March 2012

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**Margaret Keyse**

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## Summary

Mr Gordon of the Sunday Herald requested from the Scottish Ministers (the Ministers) lists of all overnight guests at Bute House between 1 January and 31 December 2007, 2008, 2009 and 2010. The Ministers responded by notifying Mr Gordon, in line with section 17 of the Freedom of Information (Scotland) Act (FOISA), that they did not hold any information which would address his requests. Following reviews of these responses to his requests, Mr Gordon remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Scottish Ministers had dealt with Mr Gordon's requests for information in accordance with Part 1 of FOISA. She did not require the Scottish Ministers to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

## Background

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1. On 17 June 2011, Mr Gordon submitted four separate requests for information to the Ministers. The requests asked for lists of all overnight guests at Bute House between 1 January and 31 December 2007, 2008, 2009 and 2010. Mr Gordon explained in each request that the list should include the name of each guest, the date of their stay and whether this person was a guest of the First Minister or another Minister.
2. The Ministers responded to these four requests in a single letter on 6 July 2011, notifying Mr Gordon, in terms of section 17(1) of FOISA that they did not hold information which would address Mr Gordon's requests, for any of the years specified.

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3. The Ministers did, however, explain that Bute House has a dual purpose as the official residence of the First Minister and as a private residence, and advised Mr Gordon that no official guests had stayed overnight in the period covered the requests. The Ministers explained that, very occasionally, private guests of the First Minister have stayed overnight, but as these visits are private, no official record is held.
4. On 6 July 2011, Mr Gordon wrote to the Ministers in four emails, separately requesting reviews of their decision in relation to each of his requests. In each case, Mr Gordon indicated that he found it strange that the Ministers were able to confirm that there had been private guests, but say they had no record of them. Mr Gordon also commented that he did not accept that Bute House is sometimes an official residence and sometimes a private residence and that guests are either official or private. He also commented that from a security perspective it is “incredible” that no record has ever existed of who was staying at Bute House.
5. Mr Gordon did not receive a response to his requests for review, and on 29 September 2011 he submitted an application to the Commissioner asking that they carry out an investigation into the Ministers’ failure to respond to his requests for review.
6. The Commissioner commenced an investigation into why the Ministers failed to respond to Mr Gordon’s requests for review within the timescale laid down in section 21(1) of FOISA.
7. On 4 November 2011 (during that investigation), the Ministers provided the Commissioner with copies of responses that they made to Mr Gordon’s requests for review on 27 July 2011. In correspondence with the investigating officer, Mr Gordon advised that he had not received these responses. They were subsequently forwarded to him by the Ministers on 15 November 2011.
8. In each of these responses, the Ministers upheld their original decision that they did not hold any information which would address the relevant request.
9. Mr Gordon subsequently confirmed that he had received these responses and withdrew his application for a decision of 29 September 2011 (which related solely to the technical matter of the Ministers failing to respond to his requests for review).
10. On 16 December 2011, Mr Gordon made a new application to the Commissioner, stating that he was dissatisfied with the outcomes of the Ministers’ reviews and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. The application was validated by establishing that Mr Gordon made his four requests 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 each of those requests. The case was then allocated to an investigating officer.



## Investigation

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12. On 13 February 2012, the Ministers were notified in writing that an application had been received from Mr Gordon and were invited to provide comments on the application (as required by section 49(3)(a) of FOISA).
13. In this letter, the investigating officer also acknowledged the previous submissions that had been made by the Ministers in a similar case for Mr Gordon which led to *Decision 030/2012 Mr Tom Gordon of the Sunday Herald and the Scottish Ministers*. The request considered in that decision also sought details of overnight guests at Bute House, across the period from 1 January 2011 to 6 July 2011. Since the Ministers had previously provided detailed submissions about their searches in the investigation concerning that request, the Ministers were asked whether the searches that they had carried out for the requests covered by the current case identified anything different to the searches that were carried out for the requested information covered by *Decision 030/2012*.
14. A response was received from the Ministers on 5 March 2012, which referred to their submission of 15 December 2011 in relation to the request considered in *Decision 030/2012*, and noted that the searches described in that case had been undertaken also in relation to the years covered by the four requests under consideration in this case. They confirmed that no information had been identified which would fall within the scope of any of Mr Gordon's information requests.
15. The relevant submissions received from both the Ministers and Mr Gordon will be considered fully in the Commissioner's analysis and findings 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 submissions made to him by both Mr Gordon and the Ministers and is satisfied that no matter of relevance has been overlooked.

### Section 17 – Information not held

17. In this case, the Ministers, when responding to each of Mr Gordon's requests and requests for review, notified him that they did not hold the information he had requested. They explained that there had been no official overnight guests at Bute House in the periods concerned, and that no information was held in relation to any private overnight guests.

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18. Mr Gordon commented in his requests for review that he did not accept the implication that Bute House is sometimes an official residence, sometimes a private residence and that guests are either official or private. Mr Gordon argued that Bute House is always an official residence – that is, a residence provided by the public purse for the First Minister of the day in Edinburgh.
19. He commented also that he found it strange that the Ministers were able to confirm that there had been private guests staying overnight at Bute House, but there was no record of them.
20. Mr Gordon also considered it “incredible” from a security perspective that no record has ever existed of who stayed at Bute House. He asked how, without that information, domestic or security staff know whether they were meeting a guest or a burglar on the landing.
21. In further submissions to the Commissioner, Mr Gordon submitted that the Ministers are under a duty to maintain information in a searchable form. He added that, considering the access which an overnight stay at Bute House provides in terms of the potential for it to be used for lobbying and other purposes, and the importance of transparency in the First Ministers’ affairs, he believed that the Ministers should record and store this information as a matter of routine. Mr Gordon also noted that destroying it within days creates a perception of secrecy and of avoiding public scrutiny.
22. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
23. Where a Scottish public authority receives a request for information that it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant that it does not hold the information.
24. In order to determine whether the Ministers dealt with Mr Gordon’s requests correctly, the Commissioner must be satisfied as to whether, at the time they received those requests, they held any information which would address them.
25. The Ministers provided submissions outlining the searches they had carried out to determine whether any relevant information was held. They provided details of the searches that were carried out of both electronic and paper records which are held within the various parts of the Scottish Government, together with the keywords that were used to facilitate the searches of electronic records.
26. The Ministers contended that if any information did exist with regard to any overnight guests staying at Bute House then it would have been identified during these searches. However, they indicated that no relevant recorded information which would address Mr Gordon’s requests was identified following these searches.

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27. The Ministers also explained that records are kept of all official visitors to Bute House, and, therefore, if there has been any official guests staying overnight, then a record would be held. The Ministers advised that no such record is held as there have been no official overnight guests at Bute House.
28. The Scottish Government does not, the Ministers submitted, keep a record of private guests who visit or stay at Bute House. The Ministers explained that this is in keeping with the practice of successive administrations, and that this is information that they do not consider that they would be expected to hold due to Bute House being the First Minister's home. They provided background information about the relationship between the official use of the building (for meetings and events), and the provision of residential accommodation of the First Minister of the day.
29. In their submissions, the Ministers advised that no records are held of whether invitations have ever been sent out inviting guests to stay overnight and no records are held regarding any received 'thank you' cards or notes.
30. Security personnel are, the Ministers explained, informed on a daily basis of all visitors attending Bute House for meetings, and are always informed of official guests who visit Bute House. The Ministers also explained that security personnel are also informed of all non-Scottish Government staff expected at Bute House daily. Information relating to non-Scottish Government staff visiting Bute House is, the Ministers advised, retained for two to three days and then disposed of.
31. While the Commissioner has noted Mr Gordon's comments about his belief that the requested information should be recorded and stored by the Ministers as a matter of routine, it is not within the ambit of the Commissioner's role to require the Ministers to retain particular documents or information, and to influence how long these are retained for. As mentioned above, in this case the Commissioner can only consider whether the Ministers actually held the information requested by Mr Gordon at the time they received his requests.
32. Having considered all of the submissions received from the Ministers, the Commissioner is satisfied that the Ministers took adequate steps and carried out reasonable searches in this particular case to determine whether any recorded information was held regarding official and private guests who stayed overnight at Bute House in the time period 1 January and 31 December 2007, 2008, 2009 and 2010. The Commissioner is satisfied that the Ministers did not, at the time they received the requests, hold any recorded information which would address Mr Gordon's information requests.
33. The Commissioner therefore finds that the Ministers complied with Part 1 of FOISA by giving Mr Gordon notice in terms of section 17 of FOISA that they did not hold any information pertaining to these requests.

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## DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by notifying Mr Gordon, in line with section 17 of FOISA, that they did not (and do not) hold any information which would address the four requests under consideration in this decision.

## Appeal

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Should either Mr Gordon 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**  
**Acting Scottish Information Commissioner**  
**29 March 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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
  - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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