

**APPLICATION FOR DECISION BY THE SCOTTISH INFORMATION
COMMISSIONER
APPLICANT: PHILIP MORRIS INTERNATIONAL**

Ref: 201100481/JW

The Scottish Information Commissioner has received an application for a decision from Philip Morris International, in relation to an information request made to the University of Stirling on 24 August 2010. A copy of Philip Morris International's application to the Commissioner is enclosed. I am satisfied that the application is valid for the purposes of section 47 of the Freedom of Information (Scotland) Act 2002 (FOISA). An investigation of your authority's handling of Philip Morris International's information request will therefore be required.

This case has now been allocated to me as investigating officer and I will be your point of contact for the duration of the investigation. If you have any queries at any point during the investigation, please do not hesitate to contact me on 01334 464610 or jwalker@itspublicknowledge.info.

I would be grateful if you would now provide me with any comments you would like to make on Philip Morris International's application, and also provide the following information or answers to the questions below to enable me to make progress with the investigation.

Please let me have your response by 27 April 2011. If no substantive response (or notification of any reasons for delay in responding) is received by this date, it will be assumed that you have no submissions to put forward and the Commissioner will decide the case accordingly

If you simply wish to rely on arguments previously made either at the initial response or at the review stage, please let me know – they do not have to be restated.

1. Please provide a detailed submission setting out why the University of Stirling considers that the information request made by Philip Morris International on 24 August 2010 was vexatious in line with section 14(1) of FOISA.
2. In their application to the Commissioner, Philip Morris International has indicated that it took the University of Stirling longer than the time in which they were expected to reply to the request to seek clarification of what had been requested. Please provide any comments that the University wishes to make regarding this assertion.
3. Also in their application to the Commissioner, Philip Morris International has commented that they consider that the University of Stirling made no attempt to justify its decision to declare the request vexatious. Please provide the University's comments on this assertion?

4. Philip Morris International also commented that the University of Stirling has not stated in what way responding to their request would constitute a significant burden. Please provide a detailed submission setting out why the University of Stirling considers that responding to this request from Philip Morris International would impose a significant burden on it?
5. In its response to Philip Morris International's request and requirement for review, the University of Stirling commented that the requisite criteria detailed in the Commissioner's guidance for determining whether a request is vexatious had been met in relation to their request. Philip Morris International stated in their application that the University of Stirling had not indicated which of the four criteria set out in the Commissioner's briefing on section 14(1) of FOISA it considers to be applicable in this case, and the reasons why. Please provide a detailed submission, giving full reasons why the University consider that the four criteria set out in the Commissioner's briefing on section 14(1) of FOISA are met in the case of Philip Morris International's request?
6. In their application to the Commissioner, Philip Morris International have also asserted that the University of Stirling did not comply with its duty to provide advice and assistance under section 15 of FOISA, and where it considered that responding to the request would be a significant burden it would have been reasonable for the University of Stirling to advise how Philip Morris International could best formulate their request which would provide access to the requested information at least inconvenience to the University. Please provide any comments the University wishes to make on this assertion?
7. Philip Morris International has asked the Commissioner to consider whether the University of Stirling's request that they clarify the scope of this request, and in particular, the request that they explain what they mean by such words as "relating to" and "information" might be viewed as a disingenuous attempt to delay publication of the requested information. I would welcome the University's comments on this matter?

Please also provide copies of any documents which you consider relevant and which provide evidence in support of your submissions. Providing documentary evidence in support of your case can lend weight to your case.

The Commissioner has recently revised his guide for Scottish Public Authorities on what to expect during an investigation carried out under FOISA or the EIRs. I strongly recommend that you read the updated version before responding to this letter if you have not already done so. The guide is available on our website: <http://www.itspublicknowledge.info/uploadedfiles/InvestigationsGuideJan2011.pdf>. If you would prefer a printed copy, please let me know. Please note, in particular, the section on exemptions [exceptions] and the standard of submissions required by the Commissioner.

The guide makes it clear that it is the responsibility of the public authority to justify the way in which it dealt with the applicant's information request and subsequent review. If your submissions are inadequate or fail to adequately justify the refusal of a request under Part 1 of FOISA, the Commissioner may order you to release the information.

While the Commissioner accepts that other relevant information may come to light in the course of the investigation, the onus is on your authority to let me know of any such information at the earliest opportunity. If changes in circumstances create an opportunity for the case to be settled, or otherwise affect the need for a decision, please let me know as soon as possible.

I would be grateful if you could provide me with your email address and direct telephone number for future contact, and if you could quote my reference number in any future correspondence.

Yours sincerely

Jill Walker
Freedom of Information Officer

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