



Decision Notice 126/2024

Appeals of Children's Panel Hearing decisions

Authority: Scottish Courts and Tribunal Service
Case Ref: 202201003

Summary

The Applicant asked the Authority for information relating to Children's Panel Hearing decisions in Aberdeen Sheriff Court within a specified period. The Authority provided some information but withheld the remainder under section 37(1) of FOISA, which contains an absolute exemption covering court records. The Commissioner investigated and found that the Authority complied with FOISA in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 2(1) and (2)(d) (Effect of exemptions); 37(1) (Court records etc.); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 25 May 2022, the Applicant made the following request for information to the Authority:

"I would like to know how many Children's Panel Hearing Decisions are Appealed successfully (Appellant V [Scottish Children's Reporter Administration] SCRA, by review in front of a Sheriff) in Aberdeen Sheriff Court for years 2020 and 2021.

I would like to know (for each year):

1. The total number of Appeals (Appellant V SCRA) submitted?
2. How many Appeals are withdrawn?

3. How many Appeals are successful?
 4. How many Appeals are deemed not admissible?
 5. Of the successful Appeals, how many managed to prove a procedural irregularity in the Children's Panel Hearing process?
 6. Of the successful Appeals, how many managed to prove the Children's Hearing Panel failed to consider a relevant fact?
 7. Of the successful Appeals, how many managed to prove an irrelevant fact had been considered by the Children's Hearing Panel?
 8. Of the successful Appeals, how many managed to prove that some circumstance in the case had changed (or was were not presented correctly to the Children's Hearing Panel)?
 9. Of the successful Appeals, how many managed to prove that the decision of the Children's Panel Hearing from a reasonable viewpoint was unjustifiable?"
2. The Applicant also requested comparable statistics for criminal case appeals for the same period.
 3. The Authority responded on 30 May 2022. The Authority provided information (in response to question 1) on the total number of appeals lodged at Aberdeen Sheriff Court against decisions of the Scottish Children's Reporter Administration. The Authority stated that it was unable to provide the information relating to criminal appeals and advised the Applicant to contact the Criminal Sheriff Appeal Court. In relation to the other information requested, the Authority considered that this information was contained within court records and as such, was exempt from disclosure under section 37(1) of FOISA.
 4. On 27 June 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision for a number of reasons and that he had asked for "statistical answers" to questions 1 to 9 of his request.
 5. The Authority notified the Applicant of the outcome of its review on 27 July 2022, fully upholding its original decision.
 6. On 8 September 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because its response to question 1 of his request was "insufficient" and that it could, and should, have provided him with responses to questions 2 to 9 of his request.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 18 October 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
9. The case was subsequently allocated to an investigating officer.

10. As the Applicant did not raise dissatisfaction in his requirement for review or in his application regarding the criminal appeals element of his request, the Commissioner has not considered that element of the request in his decision.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 1(1) – General entitlement

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section (6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in 1(6) are not applicable in this case.
13. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4) of FOISA.

The Applicant's submissions

14. The Applicant submitted in his application that he considered the Authority's response to question 1 was "insufficient", but he did not provide any further explanation.
15. The Commissioner asked the Applicant to explain why he considered the Authority's response to question 1 insufficient.
16. The Applicant explained that he wanted to understand the success rate of appeals, so he required both the total number of appeals and the number of successful appeals.
17. For a complete statistical analysis, the Applicant explained that the ideal format of results would be (for each year):
 - the total number of appeals, the number of successful appeals and the number of appeals withdrawn by the appellants
 - the total number of appeals and the number of successful appeals conceded by the Scottish Children's Reporter Administration that were subsequently heard by a new Children's Hearing
 - the total number of appeals and the number of successful appeals conceded by the Scottish Children's Reporter Administration that were subsequently heard by a sheriff

The Authority's submissions

18. In response to question 1 of the Applicant's request, the Authority confirmed that the total number of appeals lodged at Aberdeen against decisions of the Scottish Children's Reporter Administration for the years 2020 and 2021 were 14 and 26, respectively (making a total of 40).
19. The Authority explained that this information had been derived from counting the number of times a court record had been lodged rather than from information within a court record.

20. The Authority stated that it had been able to isolate these appeals on its case management system and that it did not have to access each individual court record.
21. During the investigation, in response to questions relating to the metadata it held, the Authority stated (and provided evidence showing) that there were – based on a present-day data extraction – 41 appeals within the scope of the request.
22. The Authority explained that there were a number of reasons why the present-day data extraction was different to the extraction carried out at the time of the request. For example, it was possible that a case had started life in a different jurisdiction and had been transferred to Aberdeen to conclude.

The Commissioner's view

23. The Commissioner understands that the Applicant wanted a further breakdown of the information the Authority had provided to him in response to question 1 of his request.
24. However, question 1 simply asked for the total number of appeals submitted in Aberdeen against decisions of the Scottish Children's Reporter Administration for 2020 and 2021.
25. The Applicant had already sought such a breakdown in questions 2 to 9 of his request (e.g. question 2, where he requested the number of successful appeals).
26. The Commissioner is therefore satisfied with the Authority's interpretation of question 1 of the Applicant's request.
27. The Commissioner notes the apparent discrepancy between the number of appeals the Authority stated were in scope in its initial response and the number of appeals it identified based on a present-day data extraction.
28. It does not fall within the remit of the Commissioner to assess the accuracy of information which is held by a Scottish public authority. Provided an authority appropriately interprets an information request, and subsequently provides all the information it holds which falls within the scope of that request, the authority will be deemed to have complied with Part 1 of FOISA.
29. In the circumstances, given that the discrepancy resulted from a data extraction carried out around two years after the initial response and considering the explanations provided by the Authority, the Commissioner is satisfied, on balance, that the Authority provided the information held at the time the request was received.
30. The Commissioner is therefore satisfied, on balance, that the Authority complied with section 1(1) of FOISA in responding to question 1 of the request.

Section 37 – court records etc.

31. Section 37(1)(a) of FOISA states that information is exempt information if it is contained in a document:
 - (i) lodged with, or otherwise placed in the custody of, a court for the purposes of proceedings in a cause or matter;
 - (ii) served on, or by, a Scottish public authority for the purposes of such proceedings; or
 - (iii) created by a court or member of its administrative staff for the purposes of, or in the course of, such proceedings.

32. Section 37(1) also provides that the exemption will only be engaged if the authority holds the information solely because it is contained in such a document.

The Applicant's submissions

33. The Applicant stated that answers to questions 1 and 3 of his request would be the "absolute minimum required to provide transparency".
34. The Applicant explained that he did not accept that providing a response to question 3 "infringes" any "rights or freedoms", nor would it involve any considerable work in determining if appeals were successful.
35. The Applicant submitted that the "spirit" of section 37 of FOISA should allow the Authority to, at the bare minimum, provide an answer to question 3 of his request and that it should also be able to provide answers to questions 2 and 4 to 9 of his request.
36. The Applicant explained that he needed these answers to support his campaign to make it a legal requirement to have written minutes of Children's Hearings.

The Authority's submissions

37. In contrast to its response to question 1, where it was able to provide a response without accessing information contained in court records, the Authority explained that, to respond to questions 2 to 9, it would have to access court records.
38. The Authority explained that this information was only contained in final interlocutors for each case, that it was not held anywhere else and that it would have to open and read each interlocutor to provide the information requested.
39. The Authority stated that final interlocutors are created by the court, or a member of its administrative staff, for the purposes of, or in the course of, court proceedings. Accordingly, the Authority confirmed that final interlocutors are court records as defined by section 37(1)(a)(iii) of FOISA.
40. The Authority also confirmed that the information in the final interlocutors had only come to be held by it solely because it is contained in those documents.
41. The Authority stated that the information requested was therefore exempt from disclosure under section 37(1) of FOISA.
42. The Authority noted that the Applicant had requested statistics, but reiterated that to provide those statistics it would have to use information that is exempt from disclosure under section 37(1) of FOISA.

The Commissioner's view

43. The Commissioner notes that, in essence, section 37(1) provides an absolute exemption in respect of all documents lodged with, or otherwise placed in the custody of, a court or created by a court (or its staff) for the purposes of court proceedings where the information is held by the authority solely because it is contained in such a document.
44. During the investigation, the Commissioner asked the Authority if it held metadata that would include information relevant to the Applicant's request. The Authority provided a detailed explanation of how case data presents in its case management system and provided evidence to support this. The Commissioner is satisfied that the Authority does not hold metadata that includes information relevant to the Applicant's request.

45. In this case, the Commissioner is satisfied that all of the documents under consideration have either been formally lodged with the court in relation to proceedings which had commenced or been created by members of court staff for the purposes of, and in the course of the relevant proceedings.
46. The Commissioner is also satisfied that the information is held by the Authority solely because it is contained in documents falling within the categories described above.
47. The Commissioner is therefore satisfied that the information requested is exempt from disclosure by virtue of section 37(1)(a) of FOISA.
48. This is an absolute exemption which is not subject to the public interest test contained in section 2(1)(b), and so the Commissioner is not required to go on to consider whether the public interest in disclosing the information is outweighed by that in maintaining the exemption.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to 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.

David Hamilton
Scottish Information Commissioner

13 June 2024

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...
- (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 to be outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provision of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - ...
 - (d) section 37
 - ...

37 Court records, etc.

- (1) Information is exempt information if it is contained in-
 - (a) a document-
 - (i) lodged with, or otherwise placed in the custody of, a court for the purposes of proceedings in a cause or matter
 - ...
 - (iii) created by a court or a member of its administrative staff for the purposes of, or in the course of, such proceedings; or
 - ...

and a Scottish public authority holds the information solely because it is contained in such a document.

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
- (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).