



Scottish Information
Commissioner
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Decision Notice 232/2024

Details about Sentencing Young People guidelines

Authority: Scottish Courts and Tribunal Service (SCTS)

Case Ref: 202301139

Summary

The Applicant asked the Authority whether there had been any occasions where a court gave a decision which departed from the Sentencing Young People guidelines, and sought specific information regarding this, where it had occurred. The Authority told the Applicant that the specific information sought was exempt from disclosure. Following an investigation, the Commissioner agreed.

Relevant statutory provisions

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

Background

1. On 14 July 2023, the Applicant submitted a request to the Authority seeking information as to whether there had been any occasions where courts had advised of a decision to depart from the Sentencing Young People guideline. The request also asked for details such as the names of the accused, dates of sentencing, names of judges, names of courts, categories of crimes involved, and the reasons given by judges for departing from the guidelines.
2. On 3 August 2023, the Authority responded, confirming that there had been occasions where courts advised of such decisions. However, they explained that the detailed information covered by the second part of the request was exempt under section 37 of FOISA. This exemption applies to information contained within court records, which are controlled by the courts themselves to preserve the integrity of court proceedings.
3. Dissatisfied with this response, a review was requested on the same day, arguing that the information related to proceedings in open court and should be publicly accessible, with appropriate redactions if necessary.

4. The review outcome, issued on 28 August 2023, upheld the original decision. The review response clarified that while court proceedings are generally open to the public, the information contained in court records is not automatically available for public disclosure after the fact. The review response reiterated that section 37 of FOISA is an absolute exemption, intended to maintain the courts' control over their records and procedures for disclosure. Consequently, the requested information remained exempt from release.
5. On 7 September 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he felt it was in the public interest to disclose information about cases where judges, in open court, have chosen not to follow the Young Person Guideline from the Scottish Sentencing Council as transparency is crucial for public trust and accountability.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
8. On 28 September 2023, the Authority was notified in writing that the Applicant had made a valid application..
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application. The case was then allocated to an investigation officer.
10. Both the Authority and the Applicant provided comments to the Commissioner in support of their positions, with the Authority informing the Commissioner that it was additionally seeking to rely on the exemption in section 38(1)(b) of FOISA for withholding the information covered by the second part of the Applicant's request.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

Section 37: Court records

12. Under section 37 of FOISA, information is exempt from disclosure if it is contained in a document:

- lodged with, or otherwise placed in the custody of, a court for the purposes of proceedings in a cause or matter (section 37(1)(a)(i)) or
- served on, or by, a Scottish public authority for the purposes of such proceedings (section 37(1)(a)(ii)); or
- created by a court or member of its administrative staff for the purposes of, or in the course of, such proceedings (section 37(1)(a)(iii)) and

provided the authority holds the information solely because it is contained in such a document.

13. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA. This means that the Commissioner is not required to (and, indeed, cannot) go on to consider whether the public interest in disclosing the information is outweighed by that in maintaining the exemption. So, provided the information falls into one of the categories listed in section 37, it will be exempt from disclosure.

14. The Commissioner is satisfied that the information held by the Authority which would fulfil the second part of the Applicant's request falls into one or more of the categories of documents in section 37(1)(a) and that the Authority holds it solely because it is contained in such a document.

15. As the Authority submitted, the exemption in section 37(1)(a) applies for 15 years. (The Young People's Sentencing guidelines came into force on 26 January 2022).

16. The Commissioner is therefore satisfied that the information is exempt from disclosure under section 37 of FOISA.

17. As the Commissioner has concluded that the information covered by the second part of the Applicant's request is exempt from disclosure under section 37(1) of FOISA he is not required to go on to consider the Authority's application of the exemption in section 38(1)(b).

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.

Jill Walker
Deputy Head of Enforcement

22 October 2024