



Scottish Information
Commissioner

Decision 004/2005 – Mr S and the Scottish Legal Aid Board

*Request for disclosure of Board Members' involvement with Freemasons
or other secret societies*

Applicant: Mr S
Authority: Scottish Legal Aid Board
Application: 200500685
Date of Decision: 30 June 2005

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Decision 004/2005 – Mr S and the Scottish Legal Aid Board

Request for disclosure of Board Members' involvement with Freemasons or other secret societies – information not held – whether there is a requirement to hold such information.

Facts

Mr S asked the Scottish Legal Aid Board for information disclosing Board Members' involvement in secret societies and the Freemasons. The Scottish Legal Aid Board replied that it does not hold this information.

Outcome

The Commissioner found that the Scottish Legal Aid Board was able to supply sufficient evidence that the information requested was not held.

Appeal

Should either the Scottish Legal Aid Board or the applicant 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 of receipt of this notice.

Background

1. On 15 January 2005, the applicant made a request by email to the Scottish Legal Aid Board (SLAB) asking for the disclosure of any Board Member "who has sworn the oath of the first degree entered apprentice" (i.e. is a Freemason) and the disclosure of any involvement of Board Members in secret societies.



2. His reason for asking for this information relates to his belief that SLAB has not acted impartially in making decisions about legal aid for cases in which he has been involved, and his intention to take legal action against the Board under Article 6 of the European Convention on Human Rights.
3. Mr S has made several related information requests to SLAB, two of which are the subject of other decisions (003/2005 and 005/2005).
4. On 17 January 2005, SLAB wrote to the applicant informing him that it does not hold the information he had requested. The letter informed the applicant that the Board's website includes the code of conduct and register of interests for Board Members. The letter also stated that the Board does not act as a tribunal, and referred the applicant to the Legal Aid (Scotland) Act 1986 which sets out its general functions, powers and duties.
5. Mr S sent an email to SLAB on 4 February 2005, asking for a review of its response to his request, and SLAB wrote back on 11 February 2005 confirming that the information is not held.
6. Mr S then applied to me for a decision (by email dated 23 February 2005) and stated in his application that he believes that SLAB is required to provide the information requested "both as a tribunal and under ECHR conventions".
7. With his application Mr S submitted an excerpt from a judgement of the Social Security Commissioner (Commissioner's Case No: CSI/136/02) regarding the lawfulness of a decision made previously by a social security tribunal (Case No: U/05/089/2001/01396). In this instance a benefits claimant argued that he had not received an impartial hearing by the social security tribunal because he had a known and professed antipathy toward freemasonry, and that he should be entitled to know whether anyone deciding his case had any links to freemasonry. The judgement, issued by the Deputy Social Security Commissioner, supported this view and required a new tribunal to conduct a fresh hearing, first addressing the claimant's request that he be advised whether any member of the tribunal had links to freemasonry.

The Investigation

8. Mr S's appeal was validated by establishing that he had made a request to a Scottish public authority, and had appealed to me only after requesting SLAB to review its response to his request.
9. A letter was sent to SLAB on 29 March 2005, informing SLAB that an appeal had been received and that an investigation into the matter had begun.



10. SLAB was asked:
- whether it has any legal duty or other requirement to hold the information requested by the applicant;
 - Whether such information has ever been held SLAB;
 - Whether SLAB holds any register of staff interests in which they would be expected to record membership of secret societies; and
 - What steps were taken to establish SLAB does not hold the information.
11. SLAB replied that:
- it does not believe it has any legal duty or other requirement to hold this information;
 - such information has never been held;
 - its publication scheme (in terms of section 23 of FOISA) contains details of the Register of Board Members' Interests and their Code of Conduct, prepared in compliance with the principles set out in The Ethical Standards in Public Life etc (Scotland) Act 2000 and accepted by the Standards Commission for Scotland; and
 - a comprehensive information audit was commissioned by SLAB shortly before FOISA came into force and as a result SLAB is satisfied that the information requested is not held.
12. SLAB also provided further details about the Social Security Commissioner's judgement in the case cited by Mr S (see para. 7 above), and explained that in its view the case had been misinterpreted by Mr S, as the judgement did not require members of social security appeal tribunals to reveal Masonic or "secret society" affiliations, but rather to fully deal with any submission by a party to a case alleging a lack of impartiality in the case before them. SLAB also pointed out that it is not a legal tribunal and stated that there is no legal obligation on it to provide the information sought by the applicant.

The Commissioner's Analysis and Findings

13. The investigation focused on two questions, with the aim of establishing whether or not the information requested is held by the authority. The questions were:
- a) What evidence can SLAB provide to show that the information is not held?
 - b) Is there any legal requirement or other obligation that would make it likely that such information is held?

Evidence that the information is not held

14. SLAB has provided me with evidence that a full audit of information held by it was carried out within the last year.



15. The investigating officer asked for a copy of the report from the information audit. After discussion with SLAB, it was agreed that this request could be narrowed down to the two sections of the report which listed information held by the Treasury and the Chief Executive's Office, these being most likely to hold the information.
16. The investigating officer examined the detailed audit log from the Treasury and the Chief Executive's Office of SLAB, and confirmed that there was no record of the information sought by the applicant.
17. SLAB keeps a Register of Board Members' Interests and makes this available on the authority's website; however, none of the entries in the Register disclose membership or involvement with the Freemasons or any secret society.
18. I have concluded that SLAB does not hold information about Board Members' involvement with the Freemasons or any secret society.

Is there a legal obligation for Board Members to disclose membership of the Freemasons or secret societies?

19. The applicant believes that SLAB acts as a tribunal and, as a consequence of this, there is a legal obligation for Board Members to disclose membership of the Freemasons or secret societies (as discussed in paragraphs 7 and 12 above). I wish to make it clear that it is not within my remit to confirm whether such a legal obligation exists. However, the investigating officer did consider whether this obligation existed on the basis that if such an obligation did exist, then it increased the likelihood of SLAB holding the information.
20. SLAB stated in their letter of 20 April to my office that the Board does not believe it has any legal duty or other requirement to hold this information; and that such information has never been held.
21. This is borne out by the provisions of the Legal Aid (Scotland) Act 1986, by which the Board was established, and which make no such requirement of the Board.
22. However, Board Members must observe a Code of Conduct, as required by section 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and approved by the Standards Commission for Scotland. This Code of Conduct is available on SLAB's website.
23. The Code of Conduct does not specifically require Board Members to disclose any involvement in the Freemasons or secret societies. It is based on the model Code of Conduct for Members of Devolved Public Bodies produced by the Standards Commission for Scotland, which sets out certain categories of interests which must be registered. One such category is "non-financial interests".



24. Paragraphs 4.21 and 4.22 of the model Code of Conduct for Members of Devolved Public Bodies offer guidance on what might be covered by this category:
- 4.21 You may also have a registerable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of the body to which you are appointed. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.
- 4.22 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any non-financial interest could potentially affect your responsibilities to the organisation to which you are appointed and to the public, or could influence your actions, speeches or decision-making. If in doubt, you may consult with the Standards Commission.
25. Further advice was obtained from the Standards Commission for Scotland on whether it would expect membership of the Freemasons or secret societies to be declared under the category of registerable interests. The advice received was that Freemasonry could potentially fall into the category of non-financial interests as described within this paragraph. However, membership would not automatically require to be registered – the onus is on the individual to consider whether the interest is significant or whether the test set out in 4.22 of the Code applies.
26. On the basis of this guidance, if any member of SLAB is a member of the Freemasons or a secret society, it would be their duty to assess a) whether such involvement could affect their responsibilities to the Board, or b) whether a member of the public might reasonably consider their involvement to affect their responsibilities, and to register their interest accordingly.
27. No such declaration was found in the register of Board Members' Interests found on the SLAB website.

Conclusion

28. I am satisfied that SLAB do not hold the information requested by Mr S as there is no reference to it either in the audit of the authority's information holdings or in the published register of Board Members' Interests.



Decision

I find that the authority has dealt with the applicant's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), as detailed in paras 13-28 above.

**Kevin Dunion
Scottish Information Commissioner
June 2005**