

Decision Notice



Decision 087/2009 Mr Murdo Gordon and the Scottish Court Service

Court documents

Reference No: 200900513
Decision Date: 27 July 2009

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Scottish Information Commissioner

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Summary

Mr Murdo Gordon requested from the Scottish Court Service (the SCS) copies of court documents held in relation to a criminal case heard at Inverness Sheriff Court. The SCS advised Mr Gordon that it considered the information to be exempt from disclosure in terms of sections 37(1) of FOISA, which contains an absolute exemption covering court records. The SCS also told Mr Gordon that the information was exempt under 38(1)(b) of FOISA on the basis that it contained personal data, the disclosure of which would breach the data protection principles. Following a review, Mr Gordon remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SCS had complied with Part 1 of FOISA by applying the exemption in section 37(1)(a) to the withheld information. As a result, the Commissioner did not go on to consider whether the information was also exempt under section 38(1)(b).

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(d) (Effect of exemptions) and 37(1)(a)(i) and (iii) (Court records, etc.)

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.

Background

1. On 25 August 2008, Mr Gordon, wrote to the SCS requesting a copy of the complaint and other court documents in a criminal case against named individuals at Inverness Sheriff Court.
2. The SCS responded on 3 September 2008. In its response, the SCS advised Mr Gordon that it considered the information to be exempt from disclosure under section 37 of FOISA on the basis that the information was contained within court records. The SCS also advised Mr Gordon that it was also withholding the information under section 38(1)(b) of FOISA on the basis that it was personal data, disclosure of which would contravene the data protection principles.
3. On 30 September 2008, Mr Gordon wrote to the SCS requesting a review of its decision.



4. The SCS notified Mr Gordon of the outcome of its review on 22 October 2008. In its response, the SCS confirmed that, at review, it had confirmed its earlier decision.
5. On 26 February 2009, Mr Gordon wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SCS's review and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Gordon had made a request 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 that request.

Investigation

7. The SCS is an Executive Agency of the Scottish Ministers and, on 20 March 2009, a letter was sent to the Ministers' Freedom of Information Unit, in line with agreed procedures, giving notice that an application had been received from Mr Gordon and that an investigation into the matter had commenced. The Ministers were asked to provide the Commissioner with copies of the information withheld from Mr Gordon. Subsequent references to submissions etc. being received from the SCS are therefore references to submissions etc. made by the Ministers' Freedom of Information Unit on behalf of the SCS.
8. The SCS responded with the information requested and the case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the SCS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the SCS was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
10. The SCS responded with its submissions on 13 May 2009. These are summarised and considered in the section below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Gordon and the SCS and is satisfied that no matter of relevance has been overlooked.



Consideration of Section 37 (Court records, etc.)

12. 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.
13. 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.
14. The SCS submitted that the information withheld from Mr Gordon was exempt in terms of section 37(1)(a)(i) and (iii) of FOISA as it was lodged with and/or created by a court for the purposes of proceedings. The SCS stated that the information comprised court documents produced by the Procurator Fiscal (in the case of the complaint) and staff of Inverness Sheriff Court (in the case of minutes and records of proceedings) in respect of a case raised under criminal legislation.
15. The SCS stated that the information was held by it solely because the Sheriff Clerk, an employee of the Scottish Court Service, is keeper of court records on behalf of the Sheriff Court.
16. The SCS submitted that, in applying this exemption, it had noted the Commissioner's opinion in *Decision 146/2007: Mr Alexander Doherty and the Common Services Agency for the Scottish Health Service* that the aim of section 37(1) is to leave the legal dispute resolution and inquiry system in charge of its own processes as regards the disclosure of information.
17. Mr Gordon did not make any substantive submissions to the Commissioner in relation to the exemptions relied on by the SCS, other than to express his dissatisfaction with the SCS's refusal to provide the requested information.
18. 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.
19. 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.



20. The Commissioner is also satisfied that the information is held by the SCS solely because it is contained in documents falling within the categories described above.
21. The Commissioner is therefore satisfied that the information requested by Mr Gordon is exempt from disclosure by virtue of section 37(1)(a) of FOISA. 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.
22. As the Commissioner has concluded that all of the information under consideration is exempt from disclosure under section 37(1)(a), he has not gone on to consider the SCS's application of section 38(1)(b) of FOISA.

DECISION

The Commissioner finds that the Scottish Court Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Gordon.

Appeal

Should either Mr Gordon or the SCS 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
Head of Enforcement
27 July 2009



Appendix

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.

...

- (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 outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions 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
 - ...

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