

Decision Notice

Decision 117/2015: Mr James Duff and the Accountant in Bankruptcy

Copies of reports

Reference No: 201501042

Decision Date: 28 July 2015



Scottish Information
Commissioner

Summary

On 26 January 2015, Mr Duff asked the Accountant in Bankruptcy (the AIB) for copies of all reports showing legislation was complied with in his specific case. The AIB told Mr Duff that it did not hold the information requested.

Following an investigation the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 26 January 2015, Mr Duff wrote to the AIB and made reference to previous correspondence regarding his bankruptcy. He requested:
... copies of all reports to the complaints under the Freedom of Information. That shows that the legislation was fully complied with as you have stated.
2. On 10 February 2015, the AIB provided Mr Duff with a response. It informed him that it did not hold the requested information.
3. On 16 February 2015, Mr Duff wrote to the AIB, requesting a review on the basis that he did not accept the information was not held.
4. The AIB notified Mr Duff of the outcome of its review on 13 March 2015. The AIB confirmed that the information was not held.
5. On 4 June 2015, Mr Duff wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. In summary, he disputed that the AIB did not hold the information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Duff made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. The case was subsequently allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application.

8. On 30 June 2015, the investigating officer notified the AIB in writing that Mr Duff had made a valid application and was invited to comment on this application. It was asked to explain the steps it had taken to identify and locate the information requested.
9. The AIB provided a full response on 14 July 2015.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Duff and the AIB. She is satisfied that no matter of relevance has been overlooked.

Information held by the AIB

11. 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 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.
12. The information to be given is that held by the authority at the time the request is received, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the time the request is received and the time the information is given (section 1(4)). This is not necessarily to be equated with information an applicant believes the authority *should* hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. The Commissioner notes the submissions provided by Mr Duff, in which he provides reasons why he believes the AIB should have held the information requested.
14. In its submissions to the Commissioner, the AIB explained that in Mr Duff's case (under the legislation applicable at that time), the Sheriff awarded the bankruptcy and it had no locus to intervene in that decision. As the award of sequestration was decided by a Sheriff, any issues with the sequestration would have to be raised through the Court. It further explained that it had no right to interfere with the administration and management of the estates in bankruptcy.
15. AIB went on to explain that it held some control over trustees and commissioners in this case; this was exercised in an official capacity and subject to the directions of the Court.
16. The AIB explained that any information it did hold relative to Mr Duff's bankruptcy was held within a paper file, due to the age of the case, and the contents of that file had been provided to Mr Duff under a previous subject access request (under the Data Protection Act 1998).
17. In order to confirm whether any relevant information was held, the AIB explained that the file had been searched. No information falling within the scope of the request had been identified.

18. Having considered all relevant submissions and the terms of the request, and taking into account the age of the information and the limited role of the AIB under the legislation then applicable, the Commissioner accepts that the AIB carried out adequate searches and other enquiries to ascertain whether it held any information falling within the scope of Mr Duff's request. She accepts that the AIB does not (and did not, and would not reasonably be expected to) hold the information requested by Mr Duff.

Decision

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

Appeal

Should either Mr Duff or the Accountant in Bankruptcy 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.

Margaret Keyse
Head of Enforcement

28 July 2015

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.

...

- (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.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or
(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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