

Decision Notice



Decision 125/2011 R Hill and Co and Scottish Court Service

The jurisdictional considerations taken by a Sheriff in a particular court case and the identity of the party(ies) who lodged two specified appeals

Reference No: 201100308
Decision Date: 23 June 2011

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Scottish Information Commissioner

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Summary

R Hill and Co (the applicants) requested from the Scottish Court Service (SCS) details of the party(ies) responsible for lodging two appeals along with details of the jurisdictional considerations taken by a Sheriff in a particular court case. The SCS responded by providing information on one of the two appeals and by advising that the jurisdiction for the particular court case was not contested by the defenders in the case and that the applicants already had a full copy of the papers relating to that case. Following a review, in which the SCS referred to section 37 of FOISA and provided additional information to the applicants, the applicants remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SCS had partially failed to deal with the applicant's request for information in accordance with Part 1 of FOISA, by not making it clear to the applicants that some of the requested information was not held by the SCS. However, he did not require the SCS to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 37(1) (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 13 October 2010, R Hill and Co (the applicants) wrote to the Scottish Court Service (SCS) requesting the following information:
 - (i) considerations taken by a particular Sheriff demonstrating that he had sufficient jurisdiction to hear a particular court case
 - (ii) names of the party(ies) who raised specific appeals.



2. The SCS responded on 11 November 2010. In response to the first request, the SCS advised the applicants they had already received a full copy of the papers relating to this case, and it noted that the jurisdiction of the court was not contested by the defenders in this particular case. In response to the second request the SCS provided information on one of the appeals referred to by the applicants. The SCS did not specify any exemptions.
3. On 15 November 2010, the applicants wrote to the SCS, requesting a review of its decision. In particular, the applicants commented that the SCS had failed to provide the requested information in response to their first request and that it had only referred to one appeal instead of the two appeals that had taken place in response to their second request.
4. The SCS notified the applicants of the outcome of its review on 16 December 2010. In this response the SCS noted that it considered the information requested by the applicants to be exempt from disclosure in terms of section 37 of FOISA, as it comprises information lodged with a court. However, the SCS then went on to provide the applicants with further explanation and information relating to both of their requests. In response to the first request, the SCS provided an explanation of the meaning of 'jurisdiction' and noted that, as the defenders in the case did not contest jurisdiction, the Sheriff was not required to consider or issue a judgement as to whether he had jurisdiction to hear the case. In response to the second request, the SCS confirmed the names of the party(ies) who had lodged the two specified appeals.
5. On 14 February 2011, the applicants wrote to the Commissioner, stating that they were dissatisfied with the outcome of the SCS' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that the applicants 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. On 31 March 2011, the SCS was notified in writing that an application had been received from the applicants and was asked to provide the Commissioner with any information withheld from them.
8. In its response, the SCS advised the Commissioner that its reference to the exemption contained in section 37 of FOISA in the outcome of its review, was simply a comment that such court documents would be exempt from disclosure; it was not relying upon the exemption to withhold information from the applicants. The SCS reiterated that it was not withholding any information in this case. On receipt of this response, the case was 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 about its reliance on any provisions of FOISA it considered applicable to the information requested.
10. The SCS responded on 17 May 2011, advising that it did not hold information in response to the applicants' first request and that it was withholding information falling under the scope of the applicants' second request in terms of section 25(1) of FOISA.
11. The submissions received from the applicants and the SCS are summarised and considered (where relevant) in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both the applicants and the SCS and is satisfied that no matter of relevance has been overlooked.

First request

13. Section 17(1) of FOISA states that where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information. In terms of section 1(4), the information an authority is required to provide in response to a request is generally that held by it at the time the request is received (see the Appendix for the full text of the subsection).
14. In its submissions, the SCS argued that it did not hold any information that was within the scope of the applicants' first request. The SCS referred to its previous correspondence with the applicants in which it had explained that the pursuers in this particular case had raised an action for payment of money in Edinburgh. The SCS noted that the pursuers claimed that, as their head office was in Edinburgh and this was where the defender should meet their obligation to pay the outstanding sum, the Sheriff in Edinburgh had jurisdiction to hear the case. The SCS explained that the place of performance of an obligation is a basis on which to establish jurisdiction. The SCS added that in this particular case, the defender formally admitted (through their solicitors) that Edinburgh Sheriff Court had jurisdiction.
15. The SCS noted that if the defender considers that there is some objection to the court's jurisdiction over him, he can raise a formal plea in his defence, but that, in this case, no objection was raised. The SCS advised that, as the defender accepted the jurisdiction of Edinburgh Sheriff Court, there was no need for the Sheriff of that court to consider the matter of jurisdiction and consequently the Sheriff did not issue any judgment on the question of jurisdiction. The SCS therefore submitted that it does not hold the requested information.



16. The Commissioner has considered the arguments and explanation provided by the SCS in its submissions and he accepts that the information sought by the applicants in their first request is not held (and has never been held) by the SCS. The Commissioner accepts the arguments put forward by the SCS, that the Sheriff involved had no cause to consider whether he had jurisdiction to hear the case laid before him as the defender (in their written case) formally admitted that Edinburgh Sheriff Court did have jurisdiction.
17. In their submissions, the applicants provided detailed information regarding their concerns about how this specific case was handled by the Court, including concerns they have as to whether Edinburgh Sheriff Court had any jurisdiction to hear the case. The applicants consider that the defender in this case should have been sued in the court where they were domiciled. However, the Commissioner must advise the applicants that it is not within his remit to examine whether a court case was conducted in line with the rules regarding such procedures. Nor can the Commissioner investigate any alleged inaccuracies contained within the written records of such court cases. The Commissioner can only determine whether a Scottish public authority has fully complied with its obligations under FOISA.
18. In this case, the Commissioner acknowledges that the SCS gave the applicants a full explanation as to why the Sheriff did not have to consider jurisdiction in that case. However, the Commissioner notes that, while the SCS advised the applicants (in both its initial response and review outcome) that the Sheriff did not make any jurisdictional considerations in the specified court case, it did not make clear that it was giving the applicants notice (in terms of section 17(1) of FOISA) that it did not hold the requested information. The Commissioner acknowledges that the SCS certainly implied that it did not hold the requested information, but he is of the view it could have been stated with more clarity.
19. Consequently, the Commissioner finds that the SCS did not comply with the requirements of section 17(1) of FOISA.

Second request

20. In its submissions, the SCS argued that it had provided the applicants with information relating to their second request on numerous occasions. The SCS submitted that, prior to this information request, it had provided the applicants with copies of both specified appeals, and it advised that these records contain the identity of those who had submitted the appeals. The SCS also submitted that it had confirmed the names of the party(ies) who had lodged the appeals in several letters to the applicants, including that provided as the outcome of its review. In light of this, the SCS submitted that it considered the information requested by the applicants to be exempt from disclosure in terms of section 25(1) of FOISA.
21. In their application to the Commissioner, the applicants dispute the SCS' claim that it has already provided them with the names of the party(ies) who raised both appeals. The applicants refer to other documents and correspondence to support their claim that the names provided by the SCS are wrong. The Commissioner notes that the information provided by the SCS in response to this request is information taken from official court records. The Commissioner also notes that the applicants were provided with copies of the court records relating to each appeal.



22. While the Commissioner acknowledges the applicants' dissatisfaction with the information provided by the SCS, it is outwith his remit (as indicated above) to determine whether information contained in court records is factual or accurate. He can only consider whether the SCS has complied with FOISA in dealing with the applicants' second request.
23. The Commissioner has reviewed the documentation provided to him in this case and he is satisfied that the SCS disclosed to the applicants the names of the party(ies) who lodged both of the appeals in the outcome of its review. In the circumstances, he finds that the SCS does not need to rely upon the exemption contained in section 25(1) of FOISA, as it clearly complied with the applicants' second request in its review outcome, and it did not withhold any information with regard to this second request.
24. The Commissioner therefore finds that the SCS complied with section 1(1) of FOISA in relation the applicants' second request by providing the applicants with the names of the party(ies) who lodged both specified appeals in its review outcome.

Section 37 – Court Records

25. 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.
26. 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.
27. The Commissioner notes that, in essence, section 37(1) provides an absolute exemption (as it is not subject to the public interest test contained in section 2(1) of FOISA) 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.
28. In its review outcome, the SCS advised that the information being requested by the applicants is information contained within documents lodged with a court, and that such information is exempt from disclosure under section 37 of FOISA. However, it then went on to answer the queries raised by the applicants. When questioned by the investigating officer about its application of section 37 of FOISA, the SCS noted that it was not relying upon this exemption to withhold information in this case and it provided the submissions that have been summarised above.



29. Having considered the terms of the applicants' requests, it is the Commissioner's view that any information held by the SCS that fell within the scope of either of the two requests submitted by the applicants, would be contained within documents lodged with a 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.
30. In light of this, the Commissioner would like to note that, if he had found that the SCS did hold further information of relevance to the two requests submitted by the applicants, he would have considered it exempt from disclosure in terms of section 37(1)(a) of FOISA.

DECISION

The Commissioner finds that the Scottish Court Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by providing R Hill and Co with the information they requested in their second information request.

However, the Commissioner finds that by not making clear that it did not hold information falling within the scope of R Hill and Co's first request, the Scottish Court Service failed to comply with Part 1, and in particular section 17(1) of FOISA.

Given that the Commissioner is satisfied that the Scottish Court Service does not hold any information relevant to the applicants first request, he does not require the Scottish Court Service to take any action in response to this failure.

Appeal

Should either R Hill and Co or the Scottish Court Service 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
23 June 2011



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.
- ...
- (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.

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.

...

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
- (ii) served on, or by, a Scottish public authority for the purposes of such proceedings; or
- (iii) created by a court or a member of its administrative staff for the purposes of, or in the course of, such proceedings; or

...