



Scottish Information
Commissioner

**Decision 142/2006 – Mr John H Parkes and the
Scottish Court Service**

*Copies of correspondence between clerks of the Court of Session
and Shepherd and Wedderburn, Solicitors in its capacity as agents
for a third party*

**Applicant: Mr John H Parkes
Authority: Scottish Court Service
Case No: 200600892
Decision Date: 31 July 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 142/2006 Mr Parkes and the Scottish Court Service

Request for copies of correspondence between clerks of the Court of Session and Shepherd and Wedderburn in their capacity as agents for a third party. Information not held – section 17 of FOISA.

Facts

Mr Parkes requested all correspondence by email, fax or letter between the clerks of the Court of Session and Shepherd and Wedderburn (in their capacity as agents for a third party) in which he was mentioned.

Following receipt of the Scottish Court Service's (SCS) response, Mr Parkes was not satisfied that he had been provided with all the information held by the SCS, which related to his request and asked the SCS to review its response. Mr Parkes raised a particular concern relating to a missing page of an email. The SCS re-examined Mr Parkes' request but was satisfied that an appropriate search had been conducted and no further information was provided.

Mr Parkes believed that the SCS still retained information which it had not provided, and applied to the Scottish Information Commissioner for a decision. During the course of the investigation the scope of the request under investigation was clarified.

After investigation, the Commissioner accepted that the searches carried out by the SCS were sufficient to establish that no further information relevant to Mr Parkes' request was held. In this respect the SCS was found to have fully complied with the Freedom of Information (Scotland) Act 2002 (FOISA)



Background

1. On 16 March 2006 Mr Parkes requested by letter from the SCS all emails, faxes and letters between the clerks of the Court of Session and Shepherd and Wedderburn in their capacity as agents for a third party, in which his name was mentioned.
2. The SCS replied on 28 March 2006 and supplied Mr Parkes with three documents which fell within the scope of his request.
3. Mr Parkes requested a review of the SCS's response on 3 April 2006. Mr Parkes was dissatisfied with the volume of correspondence supplied as he believed there was correspondence to which he was being denied. Mr Parkes also questioned a particular email entitled "page 1 of 2" with page 2 not being supplied.
4. The SCS responded to Mr Parkes' request for review on 28 April 2006. The SCS confirmed an appropriate search had been conducted by officials in the Court of Session. The SCS confirmed that it held no further documents in relation to Mr Parkes' request.
5. On 8 May 2005, Mr Parkes applied to the Commissioner for a decision, stating that he was dissatisfied with the outcome of the SCS's review. Mr Parkes raised a particular dissatisfaction on not being presented with the second page of a two-page email.
6. It should be noted that Mr Parkes had made an additional request for information within his request for review. Mr Parkes was informed that the scope of the investigation would only cover his initial request for information.
7. The case was then allocated to an investigating officer.



The Investigation

8. Mr Parkes' appeal was validated by establishing that he had made a valid request to a Scottish public authority, and had appealed to me only after asking the authority to review its response.
9. A letter was sent to the Scottish Executive's Legal and Parliamentary Services (the Executive), acting on behalf of the SCS, on 24 May 2006, giving notice that an appeal had been received and that an investigation into the matter had begun. The Executive was invited to comment on matters raised by Mr Parkes in terms of section 49(3)(a) of FOISA and on the application as a whole. The Executive was also asked to provide the following information:
 - Any policy that the SCS has on the retention of emails sent and received;
 - Details of the searches that were carried out at both the request and review stages including the nature of the files, the search terms used, how they identified files and how far back to look;
 - Comments on whether Mr Parkes' could have reasonably assumed there to have been more emails;
 - Comments on the missing second page of the email provided to Mr Parkes and whether he has been supplied with incomplete information.
10. The Executive replied on 19 June 2006 enclosing its statements on the case and supporting documentation.
11. In its response to this Office the Executive commented on Mr Parkes' additional request for information included in his request for review. The Executive stated that due to an oversight Mr Parkes' additional request was not dealt with at the time; in addition Mr Parkes had not submitted a request for review and the 40 day time period allowed had elapsed.
12. As Mr Parkes had not submitted a request for review in this circumstance, this additional request does not form part of this investigation. However, the investigating officer clarified the scope of the investigation with Mr Parkes and offered him advice if he wished to pursue the additional information request.

The Commissioner's Analysis and Findings

13. The investigation into this case has focussed on four separate issues:



- The policy on the retention of emails sent and received by the SCS.
- Whether the searches carried out by the SCS were adequate to identify all correspondence relevant to Mr Parkes' request.
- Mr Parkes' expectation of more correspondence.
- The missing second page of an email supplied to Mr Parkes.

Policy on the retention of emails sent and received

14. In seeking to establish whether there was likely to be any relevant correspondence held by the SCS which had not been provided to Mr Parkes, the investigating officer examined the records retention policy of the SCS.
15. In its response, the Executive advised that the SCS does not have a rigidly enforced policy on the retention of emails, but that it does provide guidance and recommendations. The Executive provided a full copy of the guidance, which was first issued in 1998.
16. The general principles and recommendations outlined in this document confirmed the following:
 - The mail system is a temporary store;
 - Important documents or documents are saved in the process (the process is the collection of court documents held by the SCS for each individual case);
 - It is recommended that all inbox mail is deleted as it is actioned;
 - In order to avoid clogging the system Sent Items Folders need to be periodically cleared;
 - Spam or unsolicited mail will be generally deleted immediately by users.
17. The Executive stated that the SCS does not have an electronic records management system and it is not the practice to create files in shared space for holding matters pertinent to individual court cases. All significant correspondence is kept in the process.

The searches conducted by the SCS

18. The Executive provided a description of the searches carried out by the SCS.
19. The Depute in Charge sent an email to the Clerks of Court and office personnel, a copy of which they provided to this Office, requesting that staff search all email folders for correspondence within the scope of Mr Parkes' initial request. In it, the four cases that Mr Parkes was involved were cited in full.



20. The Executive stated that copies of all significant correspondence by fax, email or letter will have been retained with the actual court papers, (the process) for each case, to which Mr Parkes has full access.
21. In addition to the email trawl requested, the SCS requested that each process was also checked for additional information within the scope of Mr Parkes' request.
22. The Executive stated that in relation to the time period covered in which information may be held, the searches carried out covered all saved messages within the searches mailbox. All documents with reference to a particular case will be in the same process so no issue arose as to how far back in time to search.
23. Having considered in detail the evidence presented by the Executive, I accept that the searches carried out by the SCS were sufficiently wide-ranging and thorough to establish what relevant correspondence was held by the SCS.

Expectation of more correspondence

24. As a result of Mr Parkes' initial request he was supplied with three documents. Mr Parkes was dissatisfied with the SCS response. Mr Parkes had expected more correspondence relating to his many appearances in the Court of Session.
25. The Executive could identify no particular reason as to why Mr Parkes would have expected there to be more correspondence. The Executive highlighted that much of the communication is carried out by phone and, furthermore, due to the number of cases dealt with per week by the Court of Session, it would not be feasible for all emails and other correspondence to be kept for all of these cases.
26. While I acknowledge Mr Parkes' disappointment that no additional information can be provided, I accept the SCS's explanation as to why they do not hold further correspondence.

The second page of an email supplied to Mr Parkes

27. Mr Parkes raised a particular concern relating to an email headed "page 1 of 2" of which he was only supplied page 1.
28. The Executive explained that the email provided to Mr Parkes was a hard copy and the only copy that the SCS held at the time of Mr Parkes request. This hard copy was obtained from the paper file; the electronic version had previously been deleted prior to Mr Parkes' request in line with their email retention policy.



29. Although this email is headed "page 1 of 2", the Executive has no recollection of what may have been on page 2. The Executive suggests that it may have been discarded, as can be the practice if it only contains a name or phone number. The individuals involved felt that second page may have shown an auto signature.
30. Noting the SCS's policy on retention of emails and having considered the search undertaken by the SCS, I am satisfied that the second page was not held at the time of the request.
31. In light of the submissions made by the Executive, I am satisfied that appropriate searches were carried out by the SCS and that the SCS supplied Mr Parkes with all the correspondence it held in relation to his request.

Decision

I find that the SCS dealt with Mr Parkes' request in accordance with Part 1 of FOISA and provided him with all the correspondence it held which related to his request.

Appeal

Should either Mr Parkes or the SCS wish to appeal against the Commissioner's 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.

Kevin Dunion
Scottish Information Commissioner
31 July 2006