

Decision Notice

Decision 157/2015: Mr Martin Arndt and the Registrar General of Births, Deaths and Marriages for Scotland

Minutes of the General Assembly/Bureau of the International Commission on Civil Status

Reference No: 201500551

Decision Date: 9 October 2015



Scottish Information
Commissioner

Summary

On 10 February 2015, Mr Arndt asked the Registrar General of Births, Deaths and Marriages for Scotland (the Registrar) for the minutes of the meetings of the General Assembly and Bureau of the International Commission on Civil Status (ICCS), held in Strasbourg on 28-31 March 2006.

The Registrar initially told Mr Arndt that he did not hold the minutes of the meetings for the purposes of FOISA. Following a review, where the Registrar acknowledged that he held the information, but chose to withhold it under FOISA, Mr Arndt remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the minutes of the meetings were exempt from disclosure as they comprised confidential information obtained from an international organisation.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 32(1)(b)(ii), (2) and (3) (International relations)

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 10 February 2015, Mr Arndt made a request for information to the Registrar. The information requested was:
 - The meeting minutes of the General Assembly of the ICCS, held in Strasbourg on 28-31 March 2006
 - The meeting minutes of the Bureau of the ICCS, held in Strasbourg on 28 March 2006.
2. The Registrar responded on 18 February 2015. The Registrar stated that as the UK had resigned from the ICCS, it no longer was able to access the documents held on their site. Mr Arndt was advised to contact ICCS directly to obtain the information.
3. On 19 February 2015, Mr Arndt wrote to the Registrar requesting a review of the above decision, on the basis that he believed the Registrar to hold the information in his own right for the purposes of FOISA.
4. The Registrar notified Mr Arndt of the outcome of his review on 3 March 2015. The Registrar accepted that the information was held, but refused to provide the information on the basis that section 32(1)(b) of FOISA applied.
5. On 19 March 2015, Mr Arndt wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Arndt stated he was dissatisfied with the outcome of the Registrar's review because he did not accept that section 32(1)(b) of FOISA applied to the information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Arndt 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.
7. On 8 April 2015, the Registrar was notified in writing that Mr Arndt had made a valid application. The Registrar was asked to send the Commissioner the information withheld from Mr Arndt. The Registrar provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Registrar was invited to comment on this application and answer specific questions, focusing on his application of section 32(1)(b) of FOISA.

Commissioner's analysis and findings

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

Section 32(1)(b) – International relations

10. Under section 32(1)(b)(ii), information is exempt from disclosure if it is confidential information obtained from an international organisation or international court.
11. Section 32(1)(b)(ii) is subject to the public interested test. This means that, even if the exemption applies, the information must be disclosed unless the public interest in withholding that information outweighs the public interest in disclosing it.
12. An international organisation is defined as an organisation with members which include any two or more States (section 32(3)). Usually, the organisation will have been created by treaty or will be a legal entity for the purposes of international law. Generally, only States or governments will be allowed to be a member of such an organisation.

Is ICCS an international organisation?

13. The ICCS is an intergovernmental organisation, founded in September 1948. Any State which is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, or the International Covenant on Civil and Political Rights, may become a member. Its purpose is to facilitate international co-operation in civil-status matters and to further the exchange of information between civil registrars. The Registrar confirmed that the UK had been a member from 1996 until its unilateral withdrawal in 2014.
14. Mr Arndt argued that the ICCS did not meet the definition of an international organisation in UK and therefore section 32(1)(b) could not be relied upon. He stated the accession of the UK to the ICCS has not been ratified as an Act of Parliament, as he believed was mandatory to confer the status of an international organisation on the ICCS.
15. Mr Arndt went on to argue that, as the UK Section of the ICCS was directly involved in the decision making of the General Assembly and Bureau and the approval of their minutes, the

documents were created and maintained by a UK entity in its own right, rather than by an international organisation.

16. The Commissioner is satisfied the ICCS falls within the definition of an “international organisation” in terms of section 32(3) of FOISA. Whether the UK is or was a member (and she sees no reason to doubt that it was, for a time, as a matter of fact), the ICCS is clearly composed of two or more States and therefore falls within the definition in section 32(3). The minutes in question are clearly a creation of the ICCS as a whole rather than its UK Section, a point she will consider further below.

Was the information provided in confidence?

17. Section 32(1)(b)(ii) focusses on the circumstances under which the information was obtained by the public authority. If the terms under which the information was obtained require it to be held in confidence, or if there is a reasonable expectation on the part of the organisation supplying the information that it should be held in confidence, then it should be considered confidential for the purposes of section 32(1)(b).
18. The Registrar explained that the minutes in question reflected internal proceedings, not public meetings. The information was created by the ICCS, not the Registrar, who had no input on the creation of the records or stewardship of them.
19. The Registrar explained that the organs of the ICCS include a General Assembly and a Bureau. The General Assembly meets twice a year and is made up of members of the national sections and, if appropriate, experts, appointed for this purpose by each of the member States. The Bureau meets twice a year and is made up of the presidents of the national sections, who may be assisted by one or two members of their section.
20. The Registrar went on to explain that the Deputy Registrar represented the UK at the relevant meetings, and consequently received copies of the minutes.
21. The Registrar submitted that permission to access this information could only come from the Secretariat of the ICCS. The Registrar wrote to the Secretariat, asking it to confirm that confidentiality still applied to the information, and received a reply reaffirming that this was the case. A copy of the Secretariat’s response was provided to the Commissioner.
22. This response stated that over the last year there had been several similar requests to access to ICCS minutes. These were not authorised. The ICCS stated that the issue had been discussed a number of times at its meetings and each time member States decided that the minutes were not public documents. It confirmed this was discussed as recently as May 2015, when members reaffirmed their position that the minutes were private documents of the ICCS, notably because they reproduced extensively confidential debates of the member States.
23. Given the evidence provided by the Registrar, the Commissioner is satisfied that there was a reasonable expectation on the part of the ICCS that the information provided to the Registrar (which these minutes were) would be held in confidence. In reaching this conclusion, the Commissioner has also taken account of the nature of the information withheld, which contains verbatim account of detailed candid discussions and debates surrounding the recognition of civil status throughout a number of member States.
24. The Commissioner therefore accepts that the information was obtained from an international organisation in circumstances which would make it reasonable for the ICCS to expect the

information to be held in confidence. In other words, the exemption in section 32(1)(b)(ii) applied.

Public interest test

25. As the Commissioner has found that the exemption in section 32(1)(b)(ii) was correctly applied, she must go on to consider the public interest test in section 2(1)(b) of FOISA. She can only accept the information being withheld under this exemption where, in all the circumstances of the case, the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption.
26. The Registrar submitted that although he held a copy of the information, it was for the ICCS as an organisation (as the creator and custodian of the records) to make collective decisions on access. As the UK was no longer a member state of the ICCS, it had no say in the organisation's decision making. The Registrar reiterated the expectation of the ICCS and its members that the information would remain confidential, and submitted that disclosing the minutes would be to the detriment of the ICCS, and to the detriment of its collective ability to successfully conduct its affairs.
27. The Registrar stated that as a constituent part of the devolved government, it was important that he made decisions and conducted his business in a way which upheld confidence and trust in the Government of the United Kingdom as a whole. The Registrar therefore considered that there was a strong public interest in respecting the confidentiality of information, to ensure that the UK Government was able to maintain good relations with international organisations and thus protect and promote UK interests abroad.
28. Although recognising that there might be a public interest in disclosing information to support openness, transparency and accountability and to inform public debate, the Registrar considered this to be outweighed in the circumstances by the greater public interest in respecting the confidentiality of this information.
29. Mr Arndt explained that it was not possible to appeal the decision of the ICCS not to disclose relevant documents and he considered this a violation of his human rights. Highlighting his own personal situation, Mr Arndt argued that the activities of the ICCS were of a legislative nature and noted that sessions of Parliament took place in public with the reports of such proceedings being published on the internet. This, he argued, did not prevent Members of Parliament from freely stating their opinions on sensitive issue. Mr Arndt argued that citizens had a right to know about draft conventions aimed at processing personal data, at an early stage.

The Commissioner's view

30. The Commissioner has considered the arguments presented by both parties. She accepts that there is a strong public interest in transparency and accountability, particularly in relation to the decision-making processes of public agencies at all levels.
31. The Commissioner acknowledges Mr Arndt's difficulty in accessing this information, but she does not consider the arguments he has presented to her to be sufficient to outweigh the public interest in maintaining the exemption in this case. It is clear to her, from the supporting evidence provided to her by the Registrar of the ICCS's views on the matter, that the information is held in confidence and that (inevitably) disclosure would have a detrimental impact on the relationship between the UK, the ICCS and its member States.

32. On balance, therefore, the Commissioner has concluded in this case that the public interest in maintaining the exemption in section 32(1)(b) of FOISA outweighed that in disclosure of the information. She therefore concludes that the Registrar was entitled to withhold this information.

Decision

The Commissioner finds that the Registrar General of Births, Deaths and Marriages for Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Arndt.

Appeal

Should either Mr Arndt or the Registrar General of Births, Deaths and Marriages for Scotland 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.

Rosemary Agnew
Scottish Information Commissioner

9 October 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.

...

- (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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

32 International relations

- (1) Information is exempt information if-

...

- (b) it is confidential information obtained from-

...

- (ii) an international organisation or international court.

- (2) For the purposes of subsection (1), information obtained from a State, organisation or court is confidential at any time while-

- (a) the terms on which that information was obtained require it to be held in confidence; or

- (b) the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

- (3) In subsection (1)-

...

"international organisation" means-

- (a) an international organisation whose members include any two or more States; or
(b) an organ of such an international organisation;

"State" includes-

- (a) the government of any State; and

(b) any organ of such a government,

and references to a State other than the United Kingdom include references to any territory outwith the United Kingdom.

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