

# Decision Notice



Decision 212/2013 Mr Daniel Quinn and the Scottish Court Service

Information about court cases

Reference No: 201300687

Decision Date: 26 September 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

On 11 October 2012, Mr Quinn asked the Scottish Court Service (the SCS) for information about a court case. The SCS told Mr Quinn it had already provided certain information to him and that it did not hold some of the information he had asked for. Following an investigation, the Commissioner found that generally the SCS dealt with Mr Quinn's requests in accordance with Part 1 of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 16(1) (Refusal of request); 17(1) (Notice that information is not held); 25(1) and (2) (Information otherwise accessible)

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

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1. On 11 October 2012, Mr Quinn wrote to the SCS with the following information request:  
*Can you please forward a copy of the Nobile Officium decision with incorrect date, which carries the signature and printed name of the judge (request 1);*  
*A copy of the procedural Hearing decision, date of hearing, with judge's printed name and signature, reasons for decision, court interlocutor and any other court documents for this hearing on the Bill of Suspension (request 2);*  
*The name of the judge who passed the Bill of Suspension at the first stage, along with the contact details of the person/office responsible for releasing the judges' reasons for passing the Bill of Suspension (request 3);*  
*The contact details of the office/person responsible for handling information requests, on behalf of Temporary Judge Lady R Rae QC (request 4);*  
*The contact details of the person/office responsible for releasing the judges' reasons for refusing to pass the Bill of suspension; and the reason/s for their Nobile Official decision? (request 5).*



2. On 11 November 2012, Mr Quinn wrote to the SCS, seeking a review on the ground that the SCS had not responded to his requests.
3. The SCS responded on 14 November 2012, providing explanations and copies of certain interlocutors (decisions of the Court) in response to the above requests.
4. On 18 November 2012, Mr Quinn wrote to the SCS requesting a review of its decision.
5. The SCS notified Mr Quinn of the outcome of its review on 20 December 2012. For requests 1 and 2, the SCS stated that the information was exempt under section 37 of FOISA, while also confirming that it had provided the information in its response of 14 November 2012. For requests 3, 4 and (in part) 5, the SCS gave Mr Quinn notice that it did not hold the information, with relevant explanations. For the remainder of request 5, the SCS explained that the judge's reasons for the Nobile Officium decision had already been provided to Mr Quinn in the form of the opinion of the court: it therefore considered the information exempt under section 25 of FOISA, as information otherwise accessible.
6. On 11 March 2013, Mr Quinn wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SCS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Quinn made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.

## Investigation

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8. 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. The SCS was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.

## Commissioner's analysis and findings

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9. 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 Quinn and the SCS. She is satisfied that no matter of relevance has been overlooked.
10. The Commissioner will now look at each of Mr Quinn's requests in turn.



### *Request 1*

11. The SCS explained that its letter to Mr Quinn of 14 November 2012 informed him that he had already been provided with a copy of the court's opinion in the Nobile Officium case. It provided the investigating officer with a copy of an email dated 26 July 2012, with which the SCS provided a copy of the opinion to Mr Quinn. In its letter of 14 November 2012, the SCS informed Mr Quinn that the name of the judge was on the opinion. Having considered these submissions, the Commissioner accepts that the SCS dealt with these aspects of request 1 in accordance with Part 1 of FOISA.
12. Request 1 sought a copy of the opinion containing the judge's signature. The SCS submitted that the signature was not itself information for the purposes of FOISA. The Commissioner has difficulty accepting this argument. On the other hand, without considering specific exemptions, there are clearly strong public policy reasons for copies of judges' signatures not being widely accessible (which would be the effect of disclosure under FOISA).
13. The SCS confirmed, as it had explained to Mr Quinn in a letter of 5 October 2012, that only the original opinion would be signed. Copies, such as those issued to the parties, would not be signed.
14. The SCS also explained that parties to an action were entitled to attend at the public counter (at Parliament House, the home of the Court of Session) and view the documents held in process for a particular case. This would include any documents signed by members of the judiciary. The person would not be permitted to make copies of the signed documents, but would be shown documents bearing the signature of the judge. Also, the SCS explained, parties to the action could request certified copies of documents, which would be signed by the court clerk as being an authentic copy of the court order: it confirmed that Mr Quinn had obtained such copies in the past.
15. The Commissioner has considered the SCS's submissions on this point, along with those received from Mr Quinn. She is satisfied, in the circumstances, that the SCS dealt with this request generally in accordance with Part 1 of FOISA. However, it should have made clear to Mr Quinn that the judge's signature was otherwise accessible to him, and therefore that section 25 of FOISA applied. On the other hand, she is satisfied that Mr Quinn (as an experienced party litigant) would be aware of the arrangements for accessing Court of Session documents, and consequently she will not require the SCS to take any action in this connection.

### *Request 2*

16. The SCS stated that it had provided this information to Mr Quinn in its reply of 14 November 2012. It also referred to previous communications with Mr Quinn. There were, as it had explained to Mr Quinn in the 14 November letter, no written reasons to provide. In respect of the judge's signature, it relied on the arguments considered above in respect of request 1.



17. Having considered the SCS's submissions, and bearing in mind her conclusions above in respect of signatures, the Commissioner is satisfied that the SCS dealt with this request in accordance with Part 1 of FOISA.

*Request 3*

18. The SCS reiterated that it did not hold this information. It explained that the decision referred to by Mr Quinn was not a judicial one (as was explained to him in the letter of 14 November 2012). It also referred to other, earlier communications with Mr Quinn.
19. Having considered the SCS's submissions on this point, the Commissioner accepts that it was correct to give Mr Quinn notice, in terms of section 17(1) of FOISA, that it did not hold this information.

*Request 4*

20. The SCS also reiterated that it did not hold this information. It explained that, as a judge is not deemed a Scottish public authority in terms of FOISA, there is no office or person that handles information requests on their behalf. This was explained in the review outcome of 20 December 2012. In the letter of 14 November 2012, Mr Quinn was also given contact details for the Judicial Office for Scotland. The SCS explained that it provided this information in pursuance of its duty to provide advice and assistance under section 15 of FOISA, because that office would routinely deal with complaints against members of the judiciary and any miscellaneous correspondence directed to judges.
21. Having considered the SCS's submissions on this point, the Commissioner accepts that it was correct to give Mr Quinn notice, in terms of section 17(1) of FOISA, that it did not hold this information.

*Request 5*

22. In relation to the points raised this request, the SCS believed the explanations given in its letter of 14 November 2012 to have dealt with the request adequately.
23. Having considered the SCS's submissions on this point, together with the other submissions considered above, the Commissioner is satisfied that the SCS dealt with this request in accordance with Part 1 of FOISA.



## DECISION

The Commissioner finds that generally the SCS complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Quinn. However, in failing to give Mr Quinn notice that certain information was otherwise accessible to him, it failed to deal with the request in accordance with Part 1 (in particular, section 16(1)) of FOISA. In the circumstances narrated above, she does not require the SCS to take any action in response to this failure.

## Appeal

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Should either Mr Quinn 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.

**Margaret Keyse**  
**Head of Enforcement**  
**26 September 2013**



## Appendix

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### 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.

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- (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.

...

##### 16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-

- (a) discloses that it holds the information;
- (b) states that it so claims;
- (c) specifies the exemption in question; and
- (d) states (if not otherwise apparent) why the exemption applies.

...



**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.

...

**25 Information otherwise accessible**

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

(2) For the purposes of subsection (1), information-

(a) may be reasonably obtainable even if payment is required for access to it;

(b) is to be taken to be reasonably obtainable if-

(i) the Scottish public authority which holds it, or any other person, is obliged by or under any enactment to communicate it (otherwise than by making it available for inspection) to; or

(ii) the Keeper of the Records of Scotland holds it and makes it available for inspection and (in so far as practicable) copying by,

members of the public on request, whether free of charge or on payment.

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