

Decision Notice



Decision 062/2012 Mr M and the Scottish Court Service

Court Transcripts

Reference No: 201200191
Decision Date: 30 March 2012

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Margaret Keyse

Acting Scottish Information Commissioner

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Summary

Mr M requested from the Scottish Court Service (the SCS) records of a specific court case. The SCS responded by informing Mr M that it did not hold the information. Following a review, which confirmed no information was held, Mr M remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the SCS held no information falling within the scope of the request. She 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) and (4) (General entitlement); 17(1) (Information not held)

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.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 9 November 2011, Mr M wrote to the SCS and requested information relative to a specific court case in 1989, in particular the testimony of the accused and the judge's summary of the case.
2. The SCS responded on 21 November 2011, informing Mr M that it did not hold the information requested. It explained that a transcript of the shorthand notes had never been made and, since any shorthand notes taken during a trial were routinely destroyed after 10 years, the information requested was not held.
3. On 30 November 2011, Mr M wrote to the SCS requesting a review of its decision. He advised the SCS that he had been informed that all records must be returned to the National Archives for permanent storage.



4. On 10 January 2012, the SCS responded to the request for review, confirming that it did not hold the information requested. It explained that, had the shorthand notes been transcribed, then a copy would indeed be stored at the National Archives; however, since no transcription had been ordered, the information was no longer available. The SCS also offered to obtain any records held at the National Archives in order that Mr M could view the information held.
5. On 25 January 2012, Mr M 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.
6. The application was validated by establishing that Mr M 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. The case was then allocated to an investigating officer.

Investigation

7. On 27 February 2012, the investigating officer notified the SCS in writing that an application had been received from Mr M, giving it an opportunity to comment 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 to explain the steps it had taken to identify and locate the information Mr M had requested.
8. The SCS responded on 19 March 2012, providing submissions in support of its position that the requested information was not held. In an effort to provide advice and assistance, the SCS confirmed that it intended to provide Mr M with other information found in dealing with the request and relevant to the case in question.
9. The relevant submissions obtained from Mr M and the SCS will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr M and the SCS and is satisfied that no matter of relevance has been overlooked.



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 certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). 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.
12. In his application to the Commissioner, Mr M indicated that, based on conversations he had had with representatives of other agencies, he believed that all records should be retained and could not accept the explanation that the information requested had been destroyed.
13. The SCS provided explanation as to the processes followed (at the time the trial in question had taken place) regarding the transcribing of shorthand notes taken during a trial. It explained that such notes, which were taken and held by an external firm of shorthand writers and not by the SCS, were only transcribed if requested by any of the parties involved in the legal process. It explained that the shorthand notes were retained for a period of 10 years, after which they were routinely deleted. If, during that period of time, the notes had been transcribed at the request of the court, the SCS would have retained a copy and forwarded it to the National Archives for permanent storage.
14. In addition to the above explanation, the SCS described the steps it had taken to confirm that it held no information falling within the scope of the request. These included confirming with the firm of shorthand writers that the shorthand notes had been destroyed, in addition to searches which had located the information referred to in paragraph 8 above. The Commissioner is satisfied that these were adequate in the circumstances.
15. Having considered all relevant submissions and the terms and context of Mr M's request, the Commissioner accepts that it was reasonable in all the circumstances for the SCS to conclude that it did not hold information which fell within the scope of his request. She is therefore satisfied that the SCS was correct to give Mr M notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

DECISION

The Commissioner finds that the Scottish Court Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr M.



Appeal

Should either Mr M 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
Acting Scottish Information Commissioner
30 March 2012



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.
- ...

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.
- ...