

Decision Notice

Decision 082/2017: Mr Peter Low and the Scottish Courts and Tribunals Service

Copy of an email – requester's personal data

Reference No: 201700268

Decision Date: 23 May 2017



Scottish Information
Commissioner

Summary

The SCTS was asked to provide a copy of a specific email. The SCTS refused to disclose the information under FOISA as it was the applicant's own personal data and, therefore, exempt from disclosure. The Commissioner found that the SCTS was entitled to do this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e)(i) (Effect of exemptions); 38(1)(a) (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data")

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.

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. By way of background, Mr Low was an executor for his deceased mother's estate. He was dissatisfied with the taxation of the associated solicitor's fees and wished to obtain information held by the Scottish Courts and Tribunals Service (the SCTS) in connection with this.
2. On 16 October 2016, Mr Low made a request for information to the SCTS. The information requested was a copy of an email dated 9 June 2014 from the Judicial Factor (appointed to manage the legal firm's affairs) to the Accountant of Court in relation to Mr Low's concerns.
3. On 2 November 2016, the SCTS responded to Mr Low and dealt with his request as a subject access request (SAR) under the DPA. It stated that the information (which it confirmed was contained in a letter rather than an email) could not be disclosed in response to the SAR because the DPA exemption relating to regulatory activity applied. The SCTS advised Mr Low to contact the UK Information Commissioner (the ICO) if he was dissatisfied.
4. On 10 January 2017, Mr Low wrote to the SCTS requesting a review of its decision, on the basis that the request should have been dealt with under FOISA rather than as a SAR.
5. The SCTS notified Mr Low of the outcome of its review on 30 January 2017. The SCTS reconsidered the request under FOISA and applied the exemption at section 38(1)(a) of FOISA (Personal information), stating that the content of the letter was Mr Low's own personal data. The SCTS also relied on other FOISA exemptions.
6. On 5 February 2017, Mr Low wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Low stated he was dissatisfied with the outcome of the SCTS's review because he believed the information should be disclosed. He stated that he had no objection to his personal data being disclosed: if necessary, the names of individuals could be redacted.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Low 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.
8. On 27 February 2017, the SCTS was notified in writing that Mr Low had made a valid application. It was asked to send the Commissioner the information withheld from Mr Low. It provided the information and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SCTS was invited to comment on the application and answer specific questions, with particular reference to the application of section 38(1)(a) of FOISA.
10. The SCTS provided submissions as to why it believed the information to be Mr Low's own personal data.
11. Mr Low informed the investigating officer that he had also appealed to the ICO in December 2016 in order to pursue the request as a SAR, but the ICO had not (at the time of writing) concluded the case. He confirmed that he would still like a decision from the Commissioner, even if this was simply to confirm that the information was his own personal data, as he believed this would give him leverage in his ongoing application to the ICO.

Commissioner's analysis and findings

12. 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 Low and the SCTS. She is satisfied that no matter of relevance has been overlooked.

Section 38(1)(a) of FOISA

13. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. The fact that it is absolute means that it is not subject to the public interest test set out in section 2(1) of FOISA.
14. This exemption exists under FOISA because individuals have a separate right to make a request for their own personal data (commonly known as a "SAR") under section 7 of the DPA. The DPA will therefore usually determine whether a person has a right to access their own personal data, and govern the exercise of that right. Crucially, it provides for access by the data subject (the person to whom the data relate) alone, rather than (as under FOISA) to the world at large. Section 38(1)(a) of FOISA does not deny individuals a right to access to information about themselves, but ensures that the right is exercised under the DPA and not under FOISA.
15. Personal data are defined in section 1(1) of the DPA as data which relate to a living individual who can be identified: a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in Appendix 1).
16. The SCTS submitted that the information contained in the emailed letter was clearly of direct personal relevance to Mr Low. It consisted of a series of responses by the Judicial Factor to accusations made by Mr Low in relation to the executry of his mother's estate and the

conduct of the Judicial Factor. The letter contained details of contentions made by Mr Low and the Judicial Factor's response. The SCTS submitted that the personal data was biographical to Mr Low, featuring his representations in a matter of direct personal interest to him.

17. The Commissioner has considered the submissions received from both the SCTS and Mr Low. Primarily, the letter focuses on matters of direct personal interest to Mr Low. While there are paragraphs which are more generally descriptive of the Judicial Factor's role, the nature of Mr Low's complaints could readily be deduced from these. As Mr Low has not sought anonymity, it would be clear from the decision who the information related to: the Commissioner does not believe it would be practicable to anonymise the information in the context of this request.
18. In all the circumstances, the Commissioner is satisfied that all information contained within the letter in question would relate to Mr Low and his own personal circumstances, and that he would be identifiable from that information. It would, therefore, comprise his own personal data. The Commissioner must therefore conclude that the SCTS was entitled to withhold the information under section 38(1)(a) of FOISA.
19. As the Commissioner has upheld the application of section 38(1)(a) of FOISA, she is not required to go on to consider the other exemptions applied by the SCTS.

Decision

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

Appeal

Should either Mr Low or the Scottish Courts and Tribunals Service 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.

Margaret Keyse
Acting Scottish Information Commissioner

23 May 2017

Appendix 1: 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.

...

- (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 –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

- (i) paragraphs (a), (c) and (d); and

...

38 Personal information

- (1) Information is exempt information if it constitutes-

- (a) personal data of which the applicant is the data subject;

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

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