

# Decision Notice



Decision 075/2014 Mr W and the Scottish Criminal Cases Review  
Commission

Legal expenses

Reference No: 201400157  
Decision Date: 26 March 2014

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**Rosemary Agnew**  
Scottish Information Commissioner

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## Summary

On 29 May 2013, Mr W asked the Scottish Criminal Cases Review Commission (SCCRC) for information about the fees and expenses incurred as a result of two specific judicial reviews. SCCRC provided some information, but withheld other information as commercially sensitive and exempt in terms of section 33(1)(b) of FOISA. Following an investigation, during which the information was provided to Mr W, the Commissioner found that SCCRC had not been entitled to withhold the information under this exemption.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 21(10) (Review by Scottish public authority); 33(1)(b) (Commercial interests and the economy)

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 29 May 2013, Mr W wrote to the SCCRC and requested information on fees and expenses rendered and/or paid to solicitors and Counsel instructed by the SCCRC.
2. The SCCRC responded on 24 June 2013. It provided Mr W with information in response to parts of his request, stating that “details underpinning” the information provided was being withheld under section 33(1)(b) of FOISA (as disclosure would, or would be likely to, prejudice substantially the interests of the Counsel involved). It also notified Mr W that it did not hold other information he had requested.
3. On 28 June May 2013, Mr W wrote to the SCCRC requesting a review of its decision to withhold information under section 33(1)(b).
4. The SCCRC notified Mr W of the outcome of its review on 23 July 2013. The SCCRC provided Mr W with some further detail, continuing to withhold any more detailed information under section 33(1)(b) of FOISA.



5. On 22 January 2014, Mr W wrote to the Commissioner, stating that he was dissatisfied with the outcome of SCCRC'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 W made a request 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 that request.

## Investigation

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7. On 4 February 2014, the SCCRC was notified in writing that an application had been received from Mr W and was asked to provide the Commissioner with any information withheld in this case. The SCCRC responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the SCCRC, 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 SCCRC was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, with particular reference to the section 33(1)(b), and to comment on a technical point raised by the applicant.
9. In response, the SCCRC acknowledged the technical failure and stated that it had reconsidered its position on the withheld information. It withdrew its reliance on section 33(1)(b) of FOISA and provided Mr W with the information previously withheld.
10. Mr W confirmed receipt of the information disclosed during the investigation, and stated that he still required a decision from the Commissioner.

## Commissioner's analysis and findings

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11. 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 W and SCCRC. She is satisfied that no matter of relevance has been overlooked.
12. 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. This obligation is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it.
13. In this case, the SCCRC initially withheld information from Mr W on the basis that it was exempt in terms of section 33(1)(b) of FOISA.



14. In its submissions to the Commissioner, the SCCRC withdrew its reliance on section 33(1)(b) of FOISA and provided no submissions in support of its decision to withhold information in dealing with Mr W's requirement for review.
15. In the circumstances, the Commissioner has no option but to find that the SCCRC was not entitled to withhold the information. In doing so, it failed to comply with section 1(1) of FOISA.
16. Given that the SCCRC has provided Mr W with the information held, the Commissioner does not require the SCCRC to take any action in relation to this failure.

#### **Content of notice**

17. In his application to the Commissioner, Mr W expressed dissatisfaction with the SCCRC's failure (in its response to his requirement for review under section 21(5) of FOISA) to advise him of his right to appeal to the Court of Session on a point of law, in terms of section 56 of FOISA.
18. Section 21 of FOISA determines how a Scottish public authority is required to comply with a requirement for review. Section 21(10) provides that a notice (under section 21(5)) must contain particulars about the right of application to the Commissioner conferred by section 47(1) of FOISA, and the subsequent right of appeal to the Court of Session conferred by section 56.
19. While the SCCRC's letter of 23 July 2013 (the notice under section 21(5)) informed Mr W of his right to apply to the Commissioner for a decision, it did not inform him of his right to appeal the Commissioner's decision to the Court of Session. The Commissioner therefore finds that the SCCRC failed to comply fully with section 21(10) of FOISA in dealing with Mr W's requirement for review.
20. The Commissioner does not require the SCCRC to take any action in response to this decision, but would urge the SCCRC to ensure that this information is provided to applicants in future.



## DECISION

The Commissioner finds that the Scottish Criminal Cases Review Commission (the SCCRC) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr W. She finds that the SCCRC was not entitled to withhold information from Mr W under section 33(1)(b) of FOISA. She also finds that the SCCRC failed to comply fully with section 21(10) of FOISA in notifying Mr W of the outcome of its review.

Given that the information has now been provided to Mr W, who has not been prejudiced in the exercise of his rights under FOISA, the Commissioner does not require the SCCRC to take any action.

## Appeal

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Should either Mr W or the Scottish Criminal Cases Review Commission 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**  
**Head of Enforcement**  
**26 March 2014**



## 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.

...

- (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.

...

##### 21 Review by Scottish public authority

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

##### 33 Commercial interests and the economy

- (1) Information is exempt information if-

...

- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

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