

Decision Notice



Decision 232/2011 Ms Tina McGreevy and the Scottish Legal Aid Board

Glasgow Police Duty Plan

Reference No: 201101553

Decision Date: 21 November 2011

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Kevin Dunion

Scottish Information Commissioner

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



Summary

Ms McGreevy asked the Scottish Legal Aid Board (the Board) for the Glasgow Police Duty Plan.

The Board withheld the information, considering it to be exempt from disclosure under section 26(a) and section 30(c) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review of this response, Ms McGreevy remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Board had dealt with Ms McGreevy's request for information in accordance with Part 1 of FOISA, by applying section 26(a) of FOISA (which relates to statutory prohibitions on disclosure) to the withheld information. He did not require the Board to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(b) (Effect of exemptions) and 26(a) (Prohibitions on disclosure)

Legal Aid (Scotland) Act 1986 (LASA) section 34 (Confidentiality of information)

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

1. On 6 July 2011, Ms McGreevy asked the Board for the information in the Glasgow Police Duty Plan, which had commenced on 4 July 2011. The Duty Plan sets out a rota of solicitors who can be called upon to attend a police station in certain circumstances.
2. On 1 August 2011, the Board sent Ms McGreevy an email informing her that the information she had asked for had been withheld under the exemptions in sections 26 and 30 (later confirmed to be section 30(c)) of FOISA. The Board provided reasons for its decision.
3. On 3 August 2011, Ms McGreevy asked for a review of the response to her request, stating that she did not agree with the Board's position in this matter.
4. On 11 August 2011, the Board wrote to confirm its original decision.



5. On 19 August 2011, Ms McGreevy wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Board's review and applying to the Commissioner for a decision. Ms McGreevy questioned why the Glasgow Police Duty Plan had not been made available, when the Criminal Court Duty Plan was published by the Board, and expressed concerns about the decision to withhold the information.
6. The application was validated by establishing that Ms McGreevy had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA, only after asking the authority to review its response to that request.

Investigation

7. On 7 September 2011, the Board was notified in writing that an application had been received from Ms McGreevy, and was asked to provide the Commissioner with the information withheld. This was provided by the Board and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Board, 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. In particular, the Board was asked to consider whether it would still object to the disclosure of the information, now that some time had passed since the commencement of the Duty Plan. The Board was also invited to explain in more detail why it considered the information to be exempt from disclosure, and why its reasons did not prevent it from publishing the Criminal Court Duty Plan.
9. The Board provided its submission on 4 November 2011. The information and arguments put forward by the Board are considered in the next part of this decision notice.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.

Section 26(a) of FOISA

11. Under section 26(a) of FOISA, information is exempt information if its disclosure by a Scottish public authority, otherwise than under FOISA, is prohibited by or under an enactment. This is an absolute exemption in that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.



The Board's submission

12. The Board has argued that section 34 of LASA prohibits disclosure of the information requested by Ms McGreevy (see the Appendix for the full text of this provision).
13. The Board stated that it was established under section 1 of LASA and given functions (a) of securing that legal aid and advice and assistance were available in accordance with LASA; and (b) of administering the Legal Aid Fund. The Board argued that the “purposes of the Act” included both general administration of the legal aid scheme and the formation and provision of advice to Ministers. Therefore, the “purposes of the Act” were not simply the provision of legal aid.
14. The Board explained that, under the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011, which were made under LASA, it had a duty to arrange for a solicitor to be available for the purpose of providing advice and assistance to a suspect detained under section 15A of the Criminal Procedure (Scotland) Act 1995. The Board advised that it fulfilled this by operating the Police Station Duty Scheme.
15. The Board took the view that the operation of the Police Station Duty Plan was a purpose of LASA in the same way as the Board’s grant funding powers or direct employment of solicitors to provide advice.
16. The Board noted that while section 34(1)(a) of LASA made specific provision for the confidentiality of information furnished by those seeking or receiving legal aid, subsection (b) also provided that other information furnished to the Board was to be treated as confidential, unless consent is obtained from the person who furnished it. Reading sections 1, 2 and 34(1)(b) of LASA together, the Board considered that its duty of confidentiality clearly extended beyond information received from those seeking or receiving legal aid, and encompassed information provided for a range of purposes, including other functions of the Board such as the Police Station Duty Plan.
17. The Board explained that the Police Station Duty Plan was its own plan, and that solicitors applied to the Board to be part of the Plan, providing personal information as part of their application. It was only used by solicitors who were part of the Plan, and by the Board’s Solicitor Contact Line. In this regard, it was to be contrasted with the Criminal Court Duty Plan, which required to be available to the police and court officials, and was therefore published: solicitors were made aware of this when applying to take part in this latter plan.

The Commissioner's view

18. In *Decision 003/2010 Jonathan Mitchell QC and the Scottish Legal Aid Board*¹, the Commissioner accepted that section 34(1)(b) of LASA prohibited the disclosure of certain information under FOISA, where the information had been furnished to the Board for the purposes of LASA. The same issue must be addressed in this case.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200900527.asp>



19. The Commissioner accepts that the information about the solicitors participating in the Glasgow Police Duty Plan was information “furnished” to the Board by third parties, who had not consented to its disclosure. Having considered the Board’s submission, as outlined in the previous paragraphs, the Commissioner accepts that information was furnished for the purposes of LASA, under which the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 were made. He is therefore obliged to accept that section 34(1)(b) of LASA prohibits disclosure of the information furnished to the Board in relation to the Glasgow Police Duty Plan.
20. Section 34(2) of LASA specifies certain purposes for which information covered by section 34(1) may be disclosed. In this case, however, the Commissioner does not consider that disclosure would be for any of the purposes specified in section 34(2) and therefore no exception to the prohibition applies.
21. In all the circumstances, therefore, the Commissioner accepts that the withheld information in the Glasgow Police Duty Plan is exempt from disclosure under section 26(a) of FOISA, because its disclosure (without consent, which was not forthcoming in this case) is prohibited by section 34(1)(b) of LASA.
22. Having found that the information is exempt from disclosure under section 26(a) of FOISA, the Commissioner is not required to consider whether the exemption in section 30(c) of FOISA should also be upheld.
23. The Commissioner notes that the Board has recently written to the solicitors on the Glasgow Duty Plan to ask them whether they consent to disclose their participation in the scheme.

DECISION

The Commissioner finds that the Scottish Legal Aid Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with Ms McGreevy’s information request.



Appeal

Should either Ms McGreevy or the Scottish Legal Aid Board 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
Head of Enforcement
21 November 2011



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.

...

- (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 –

...

- (b) section 26;

...

26 Prohibitions on disclosure

Information is exempt information if its disclosure by a Scottish public authority (otherwise than under this Act)-

- (a) is prohibited by or under an enactment;

...



Legal Aid (Scotland) Act 1986

34 Confidentiality of information

- (1) Subject to subsection (2) below, no information furnished for the purposes of this Act to the Board or to any person acting on its behalf shall be disclosed-
- (a) in the case of such information furnished by, or by any person acting for, a person seeking or receiving legal aid or advice and assistance, without the consent of the person seeking or receiving legal aid or advice and assistance; or
 - (b) in the case of such information furnished otherwise than as mentioned in paragraph (a) above, without the consent of the person who furnished it,
- and any person who, in contravention of this subsection, discloses any information obtained by him when employed by, or acting on behalf of, the Board shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (2) Subsection (1) above shall not apply to the disclosure of information-
- (a) for the purpose of the proper performance or facilitating the proper performance by the Secretary of State, the Board, any court or tribunal or by any other person or body of duties or functions under this Act;
 - (aa) for the purpose of any determination or investigation by the Scottish Legal Complaints Commission under the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) (“the 2007 Act”);
 - (b) for the purpose of investigating, prosecuting or determining any conduct complaint, remitted by the Scottish Legal Complaints Commission under section 6(a) or 15(5)(a) of the 2007 Act-
 - (i) against a solicitor, by the Law Society or the Scottish Solicitors’ Discipline Tribunal;
 - (ii) against an advocate, by the Faculty of Advocates;
 - (c) for the purpose of investigating or prosecuting any offence or for the report of any proceedings in relation to such an offence.
 - (d) for the purposes of any investigation by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002 (asp 11);
 - (e) for the purposes of an inquiry by the Scottish Commission for Human Rights under section 8 of the Scottish Commission for Human Rights Act 2006 (asp 16);

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- (f) for the purposes of, or required by virtue of, section 50 of the Freedom of Information (Scotland) Act 2002 (asp 13);
 - (g) in pursuance of a requirement made under section 10(1) of the Adult Support and Protection (Scotland) Act 2007 (asp 10).
- (3) For the purposes of this section, information furnished to any person in his capacity as counsel or a solicitor by or on behalf of a person seeking or receiving legal aid or advice and assistance is not information furnished to the Board or to a person acting on its behalf.