

Decision Notice 121/2020

Bankruptcy (Scotland) Act 1913

Applicant: The Applicant

Public authority: Scottish Courts and Tribunals Service

Case Ref: 202000416



Scottish Information
Commissioner

Summary

The SCTS was asked for the name of the Auditor at Dumfries Sheriff Court between certain dates in 1975 and the rule under the Sheriff Court that allowed the auditor to take certain action in an administration under the Bankruptcy (Scotland) Act 1913.

The SCTS told the Applicant it did not hold the information he had asked for. Following investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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.

Background

1. On 28 January 2020, the Applicant made a request for information to the Scottish Courts and Tribunals Service (the SCTS). The information requested was in relation to an administration in terms of the Bankruptcy (Scotland) Act 1913 and the Applicant asked for:
 - a) *The name of the Auditor at Dumfries Sheriff Court, between October to December 1975 that held a taxation of [named account] for the sum of [£redacted] a second taxation for [£redacted] making total of [£redacted].*
 - b) *The Rule under the Sheriff Court that entitled the Auditor to have taxation without intimation being served on me to challenge the taxation.*
2. The SCTS responded on 2 March 2020. The SCTS provided explanation to the effect that any relevant information it held would only be contained in the court records of the case referred to in the request. It advised that a check had been carried out of the records held at Dumfries Sheriff Court and the Court of Session and it had made enquiries with the National Records of Scotland. It further advised that, due to procedures in place at the time, records of the type in question did not require to be held for permanent preservation and so would have been destroyed at that time.
3. The SCTS therefore issued a response in terms of section 17(1) of FOISA, advising the Applicant that it did not hold the information requested.
4. On 6 March 2020, the Applicant wrote to the SCTS, requesting a review of its decision. In relation to request a), he named two individuals that he believed could be the Auditor in question. In relation to request b), he explained why he understood the taxation to have been invalid.
5. The SCTS notified the Applicant of the outcome of its review on 17 March 2020. It upheld the original response without modification.
6. On 21 March 2020, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant provided

comment on the administration in question, submitting that he believed the information requested should be held the SCTS.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
8. On 27 July 2020, the SCTS was notified in writing that the Applicant had made a valid application to the Commissioner. 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 this application and answer specific questions, focusing on the steps it had taken to identify and locate any information falling within the scope of the request.
10. The SCTS responded, maintaining it did not hold the information requested by the Applicant and explaining the searches carried out.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the SCTS. He is satisfied that no matter of relevance has been overlooked.

Information held by the SCTS

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, 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. The qualifications contained in section 1(6) are not applicable in this case.
13. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. 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.
14. The Commissioner notes the submissions provided by the Applicant, in which he provides reasons why he considers the SCTS should hold the requested information. These submissions relate to his disagreement with the decision-making process in the administration in question.
15. In its submissions to the Commissioner, the SCTS confirmed the position that it held no record of the information requested by the Applicant. In this regard, the SCTS referred to the Commissioner's *Decision 053/2020: The Applicant and the Scottish Courts and Tribunals Service*, in which it had previously explained that it did not hold information on how judicial decisions were reached.
16. The SCTS confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of the Applicant's request, with details. These included searches of relevant electronic and paper records, consultation with relevant staff,

and referencing judicial findings available online. The SCTS provided supporting evidence regarding the searches and their outcomes. The conclusion of the searches and enquiries was that no information was held falling within the scope of the request.

17. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
18. Having considered all relevant submissions and the terms of the request which is the subject of the application, the Commissioner accepts that the SCTS interpreted the Applicant's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held. Given the explanations and other submissions provided, he is satisfied that the SCTS did not hold the information under consideration here and was correct to give the Applicant 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 Courts and Tribunals Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the SCTS 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

5 October 2020

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.

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