

# Decision Notice 122/2020

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## Bankruptcy (Scotland) Act 1913

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**Applicant: The Applicant**

**Public authority: Scottish Courts and Tribunals Service**

**Case Ref: 202000980**



Scottish Information  
Commissioner

## Summary

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The SCTS was asked for rules used in the decision making process in connection with a specific 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

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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

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1. On 2 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 a specific administration in terms of the Bankruptcy (Scotland) Act 1913. The Applicant asked for:
  - a) The rule that entitled him as an individual to be held liable for the debt of a corporate body.
  - b) The rule that allowed the Sheriff to grant a second Extract Decree on 26 February 1976 at the instance of [named company A].
  - c) The rule that allowed the Sheriff to announce decree by someone's initial.
  - d) The rule that entitled [named company B] to be sisted on 28 April 1976 in favour of the then pursuers.
  - e) The rule that entitled [named company C] to hold the sum of £550 for five months
  - f) The rule that entitled the Sheriff to appoint a Trustee when the debt had been paid to recall the sequestration.
2. On 10 February 2020, having received no response to his request, the Applicant wrote to the SCTS requesting a review.
3. On 21 March 2020, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the SCTS's handling of his request and its failures to respond, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The SCTS notified the Applicant of the outcome of its review on 16 July 2020. The SCTS apologised for its failure to respond. It provided the Applicant with a notice in terms of section 17(1) of FOISA, advising that it did not hold the information requested. The SCTS stated that it also considered his request to be vexatious and repeated in terms of section 14(1) and 14(2) of FOISA, with reasons. The SCTS explained that its function is to provide administrative support to the Scottish courts and tribunals and the judiciary. It stated it plays

no part in judicial decisions and is unable to analyse the law or explain how a member of the judiciary reached a decision.

5. Having received the review outcome of 16 July 2020, the Applicant withdrew his initial application to the Commissioner.
6. On 28 July 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 stated he could not accept the content of the SCTS's response of 16 July 2020. He provided comment on the administration in question, stating that in Scots Law the responsibility for sequestration lay with the Sheriff Clerk and the Accountant of Court (who he believed came within the remit of the SCTS).

## **Investigation**

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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 17 September 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.
10. The SCTS responded, maintaining it did not hold the information requested by the Applicant and explaining its position. It also provided submissions to the effect that it considered the Applicant's request to be vexatious and repeated under section 14(1) and 14(2) of FOISA.

## **Commissioner's analysis and findings**

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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.
12. The Commissioner will first of all consider whether the SCTS was entitled to provide the Applicant with notice, in terms of section 17(1) of FOISA, that it did not hold the information requested by the Applicant. Only where he finds that the SCTS was not so entitled will he go on to consider the application of section 14(1) and (2) of FOISA, as claimed by the SCTS.

## **Information held by the SCTS**

13. 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.
14. 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.

15. 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.
16. 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 commented on the Commissioner's *Decision 053/2020: The Applicant and the Scottish Courts and Tribunal Service*, in which it had previously explained that it did not hold information on how judicial decisions were reached.
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, 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, 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. He accepts the SCTS's submission that it is not its role to record the legal provisions underlying decision-making in any given case (which is, essentially, a judicial function rather than an administrative one).
19. Given the explanations and other submissions provided, the Commissioner 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.
20. As the Commissioner is satisfied that the SCTS was correct to give the Applicant notice in terms of section 17(1) of FOISA, he does not consider it necessary in this instance to give consideration to the provisions of section 14(1) and (2) of FOISA.

## Decision

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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**

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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.

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- (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.

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#### 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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