

# Decision Notice



Decision 115/2011 Mr Peter Cherbi and the Scottish Legal Complaints Commission

Anonymous threats

Reference No: 201100205  
Decision Date: 10 June 2011

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr Peter Cherbi requested from the Scottish Legal Complaints Commission (SLCC) information relating to anonymous threats received by the SLCC and other bodies. The SLCC responded by providing Mr Cherbi with some information but it withheld one document in terms of section 30(c) and 38(1)(b) of FOISA. Following a review, Mr Cherbi remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SLCC had failed to deal with Mr Cherbi's request for information in accordance with Part 1 of FOISA, by incorrectly giving him a refusal notice under section 16 of FOISA, that it was withholding relevant information from him. The Commissioner concluded that the withheld information fell outwith the scope of Mr Cherbi's information request and so the refusal notice was issued in error. The Commissioner also found that the SLCC had breached the timescales for responding under section 21(1) of FOISA. He did not require the SLCC to take any action in respect of these breaches.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 16(1) (Refusal of request); and 21(1) (Review by Scottish public authority).

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 18 June 2010, Mr Cherbi emailed the Scottish Legal Complaints Commission (SLCC). In this email, Mr Cherbi referred to paragraph 55 of the Commissioner's Decision Notice *101/2010 Mr Peter Cherbi and the Scottish Legal Complaints Commission*. Paragraph 55 of Decision 101/2010 states that:

The SLCC submitted that disclosure of such information would impact upon the physical or mental health of the individuals concerned as anonymous threats had been received by members of staff and other individuals connected to the SLCC. The SLCC also referred to threats made to other bodies.



2. With reference to the text of the above paragraph, Mr Cherbi requested from the SLCC the following information:  
  
*“Information relating to these alleged threats received by members of staff and other individuals connected to the SLCC and threats made to other bodies including the identities of those other bodies”.*
3. The SLCC responded on 16 July 2010. It advised Mr Cherbi that it considered his request to be vexatious in terms of section 14(1) of FOISA, and that it was therefore not obliged to comply with his request.
4. On 19 July 2010, Mr Cherbi wrote to the SLCC, requesting a review of its decision and challenging the SLCC's arguments in support of section 14(1) of FOISA.
5. The SLCC notified Mr Cherbi of the outcome of its review on 6 August 2010, upholding the earlier decision to treat his request as vexatious.
6. On 6 August 2010, Mr Cherbi wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SLCC's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The Commissioner issued a Decision Notice in relation to this application on 10 November 2010. In this Decision Notice the Commissioner found that Mr Cherbi's request was not vexatious in terms of section 14(1) of FOISA and he required the SLCC to provide Mr Cherbi with a response to his initial request of 18 June 2010, other than in terms of section 14(1).
8. On 22 December 2010, the SLCC responded to Mr Cherbi's initial request. It provided him with some information but indicated that it had withheld certain other information on the grounds that it was exempt from disclosure under sections 30(c) and 38(1)(b) of FOISA. A schedule provided to Mr Cherbi with this response indicated that the withheld information was contained in documents numbered 1-3, containing email(s) from an anonymous sender.
9. On the same date, Mr Cherbi wrote to the SLCC requesting a review of its decision to withhold this information, and noting that he was not seeking the names of any individuals identified in the documents.
10. The SLCC notified Mr Cherbi of the outcome of its review on 1 February 2011. The SLCC confirmed that it was upholding its initial decision to withhold the information in terms of section 30(c) and 38(1)(b) of FOISA. The SLCC also clarified that the withheld information comprised a single email and that it was being withheld in its entirety as the redaction of individual names would not prevent the inappropriate release of personal data.
11. Also on 1 February 2011, Mr Cherbi wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SLCC's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



12. The application was validated by establishing that Mr Cherbi had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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13. On 4 February 2011, the SLCC was notified in writing that an application had been received from Mr Cherbi and was asked to provide the Commissioner with any information withheld from him. The SLCC responded with the information requested and the case was then allocated to an investigating officer.
14. The investigating officer subsequently contacted the SLCC, 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 investigating officer queried whether the information being withheld by the SLCC actually fell within the scope of Mr Cherbi's request. This was because the withheld emails related to threats made by a known individual, whereas Mr Cherbi's request had sought information relating to anonymous threats received by SLCC staff (or others).
15. The SLCC was also asked for details of the searches it had undertaken to locate information relevant to Mr Cherbi's request and was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
16. In its response, the SLCC confirmed that the withheld document did not fall within the scope of Mr Cherbi's request, because it was not anonymous to the SLCC. It provided details of searches it had undertaken to identify other information relevant to the request. The SLCC noted that its searches had not identified any further information of relevance to the request and it confirmed that it did not hold any further information that could be considered to fall within the scope of Mr Cherbi's request.
17. The relevant submissions received from the SLCC and Mr Cherbi will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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18. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Cherbi and the SLCC and is satisfied that no matter of relevance has been overlooked.

### The SLCC's decision to withhold information



19. Section 16 of FOISA sets out what information an applicant must be told if a public authority intends to refuse to disclose information in response to an information request. In particular, section 16(1) requires that a public authority must disclose that it holds the information requested, state that it considers the information to be exempt from disclosure, indicate which exemption is considered to apply and why that exemption applies.
20. The SLCC issued such a notice in this case. However, the Commissioner has found that the information to which this notice was applied did not fall within the scope of Mr Cherbi's request.
21. In making his request for information, Mr Cherbi referred to the content of paragraph 55 of *Decision 101/2010 Mr Peter Cherbi and the Scottish Legal Complaints Commission*, which mentioned SLCC's submissions regarding **anonymous** threats received by SLCC staff and other individuals connected to the SLCC, and also threats made to other bodies. Mr Cherbi then asked the SLCC for "information relating to *these alleged threats* [emphasis added] received by members of staff and other individuals connected to the SLCC and threats made to other bodies including the identities of those other bodies".
22. Given the content of paragraph 55 of *Decision 101/2010 Mr Cherbi and the Scottish Legal Complaints Commission*, the Commissioner considers that Mr Cherbi's information request can only be read as seeking information about anonymous threats made to SLCC staff or individuals associated with it; or (not necessarily anonymous) threats received by others.
23. The information withheld contained information about threats being made to a member of SLCC staff by an identified individual. The relevant threat was not anonymous.
24. The Commissioner notes that during the course of his investigation, the SLCC conceded that the single document it was withholding from Mr Cherbi, did not, in fact, fall within the scope of his information request as it comprised a threat to an SLCC employee from a named person rather than an anonymous threat.
25. By way of explanation, the SLCC submitted that as this email (along with certain information it had disclosed to Mr Cherbi in its initial response) was relevant to the arguments that were set out in paragraph 55 of *Decision 101/2010*, it had identified it as being relevant to the current request irrespective of its lack of anonymity. The SLCC submitted that the documents it had provided to Mr Cherbi in its initial response had also been relevant to the arguments that featured in paragraph 55 of *Decision 101/2010*.
26. After considering the submissions provided by the SLCC in this case (along with the email withheld from Mr Cherbi) the Commissioner recognises that the SLCC has interpreted Mr Cherbi's request to include information relating generally to what it perceived to be threats relevant to its submission as summarised in *Decision 101/2010*. The information disclosed to Mr Cherbi included comments made on a public forum, in some cases by anonymous individuals, and in other cases by identified individuals.



27. However, given the terms of Mr Cherbi's request and its direct reference to paragraph 55 of decision 101/2010, and the content of the withheld email, the Commissioner must conclude that the withheld information actually fell outwith the scope of Mr Cherbi's request. Having reached this conclusion, the Commissioner must conclude that Mr Cherbi was not entitled to receive this information in response to his information request. The Commissioner has not gone on to consider whether the SLCC was entitled to withhold this information under any exemption within Part 2 of FOISA.
28. Given that the information withheld from Mr Cherbi does not fall within the scope of his request the Commissioner finds that the SLCC acted in breach of Part 1 of FOISA by incorrectly issuing a section 16 notice in this case. In so doing, the SLCC suggested that it held further information falling within the terms of Mr Cherbi's request when it did not.
29. When questioned, the SLCC advised that it had conducted extensive searches for information captured by Mr Cherbi's response but it had found nothing other than the information it had disclosed (and the single document it now accepts was outwith the scope of the request). The SLCC submitted that it had directed its staff and members to conduct searches of personal and restricted access drives, as well as searching all of the public drives on its IT system. The SLCC had also asked staff and members to check any personally held hard copy files as well as searching all its hard copy files for any media records that mention the SLCC. In addition, the SLCC had conducted hard copy and electronic files relating to the single withheld email from a named individual. The SLCC advised that none of the above searches had identified any information falling within the scope of Mr Cherbi's information request.
30. In the light of these comments, the Commissioner is satisfied that the SLCC held no further information falling within the terms of Mr Cherbi's information request.

### **Section 21 of FOISA - Review by Scottish public authority**

31. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the receipt of the requirement to comply with a requirement for review. Mr Cherbi submitted a requirement for review by email on 22 December 2010.
32. However, the SLCC did not provide a response to this request for review until 1 February 2011. In the circumstances, the Commissioner finds that the SLCC failed to respond to Mr Cherbi's request for review within the 20 working days allowed under section 21(1) of FOISA. In failing to comply with this timescale, the SLCC failed to comply with Part 1 of FOISA.
33. While noting with concern the failures identified in this case, the Commissioner does not require any action to be taken in response to these particular breaches in response to Mr Cherbi's application. However, the breaches will be noted and may be taken into account in determining whether any future action should be taken in respect of the SLCC under the Commissioner's Enforcement Strategy.

Decision 115/2011  
Mr Peter Cherbi and the  
Scottish Legal Complaints Commission



The Commissioner finds that the SLCC partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Cherbi.

The Commissioner found that the SLCC failed to comply with the requirements of section 16 of FOISA, by incorrectly advising Mr Cherbi that it was withholding information from him that fell within the scope of his request. Since the Commissioner has concluded that the withheld information fell outwith the scope of Mr Cherbi's information request, he has found that the refusal notice was issued in error.

The Commissioner also finds that the SLCC failed to comply with section 21(1) of FOISA, by failing to provide its response to the requirement for review within 20 working days. He does not require the SLCC to take any action in respect of these failures.

## Appeal

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Should either Mr Peter Cherbi or the SLCC 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**  
**10 June 2011**



## 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.
- ...
- (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. ...
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

##### 16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-
- (a) discloses that it holds the information;
  - (b) states that it so claims;
  - (c) specifies the exemption in question; and
  - (d) states (if not otherwise apparent) why the exemption applies.
- ...





**21 Review by Scottish public authority**

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...