

Decision Notice

Decision 011/2015: Mr Gerard Sweeney and the Scottish Court Service

Client consultation facilities within court premises

Reference No: 201402191

Decision Date: 22 January 2015



Scottish Information
Commissioner

Summary

On 16 April 2014, Mr Sweeney asked the Scottish Court Service (the SCS) for information surrounding the provision of client consultation facilities within Scottish courts, and specifically those at Fort William Sheriff Court.

The SCS provided Mr Sweeney with some, mainly technical, information. Mr Sweeney did not believe he had been provided with all the information he requested and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the SCS did not hold any further information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 16 April 2014, Mr Sweeney made a request for information to the SCS. The information request was in three parts, although Mr Sweeney has subsequently clarified to the Commissioner that his application for a decision covers the following two parts of his request only:
 - (i) a copy of all documents, letters, discussion papers, minutes of meetings etc. concerning the provision of client consultation facilities at Fort William Sheriff Court for the period 1 January 2000 to 16 April 2014.
 - (ii) a copy of all SCS policy or discussion papers/documents etc. relating to the requirement for, and the provision of, court client interview facilities at Scottish courts.
2. The SCS responded on 24 June 2014. In response to part (i), the SCS provided an extract from an audit relating to Fort William Sheriff Court. In response to part (ii), it provided mainly technical information for custodial and non-custodial interview rooms, and an extract from a design guide. The SCS also provided Mr Sweeney with the content of a comment made by its Chief Executive to the Scottish Parliament's Justice Committee, stating that the SCS did not provide facilities for solicitors to do business with clients.
3. On 1 August 2014, Mr Sweeney wrote to the SCS requesting a review of its decision. He was dissatisfied with the response as, in his view, it did not identify or disclose the information he had requested. Mr Sweeney commented that proper provision for private solicitor/client consultations was necessary within Scottish courts, but that Fort William Sheriff Court (following its recent refurbishment) did not provide the same client consultation facilities as other courts in Scotland he was familiar with.
4. The SCS notified Mr Sweeney of the outcome of its review on 29 August 2014, upholding its original decision without modification on the basis that its initial response had identified all relevant information.

5. On 1 September 2014, Mr Sweeney wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr Sweeney stated he was dissatisfied with the outcome of the SCS's review because:
 - (i) he expected there to be further information relating to discussions concerning the requirement for client consultation facilities at the refurbished Fort William Sheriff Court.
 - (ii) he expected the requirement to provide such facilities to have been considered as a general issue within the SCS, as (in his view) such provision was made at all other courts in which he had conducted business.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Sweeney made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. The case was allocated to an investigating officer.
7. On 8 October 2014, Mr Sweeney confirmed that his dissatisfaction related to the two parts of his request identified above. He also confirmed he did not require information on consultation facilities for clients in custody (either at Fort William or in general). Mr Sweeney also explained that he was seeking information, covering the period stipulated in his request, pertaining to:
 - (i) discussions surrounding, and decisions taken (including the reasons for these decisions), regarding the provision of consultation facilities for non-custodial clients in relation to the refurbishment of Fort William Sheriff Court.
 - (ii) the SCS's policy/practice regarding the provision of consultation facilities for non-custodial clients, across Scottish courts in general, e.g. information stipulating any minimum level of provision and any basic requirement to provide such facilities.

He confirmed that he was not seeking technical details of the facilities to be provided.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 21 October 2014, the investigating officer notified the SCS in writing that Mr Sweeney had made a valid application. The SCS was appraised of the scope of Mr Sweeney's application, and was invited to comment and answer specific questions. In particular, the SCS was also asked to provide detailed submissions as to whether it held any information falling within the scope of the request under consideration, with reference to the steps taken to establish this.
9. The SCS responded on 5 November 2014. Further comments were obtained from both parties during the investigation.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both Mr Sweeney and the SCS. She is satisfied that no matter of relevance has been overlooked.
11. In his application to the Commissioner, Mr Sweeney referred to Articles 6(3)(b) and (c) of the European Convention on Human Rights (as incorporated in Schedule 1 to the Human Rights Act 1998¹). These set out the minimum rights to be afforded to everyone charged with a criminal offence, specifically adequate time and facilities (for the preparation of a defence) (Article 6(3)(b)) and legal assistance (Article 6(3)(c)). He argued that the court must make provision for private consultation with clients, in the same way as facilities for toilets, interpretation and physical access. In his experience, Fort William was the only court devoid of necessary client consultation facilities.
12. Mr Sweeney explained that prior to the recent refurbishment of Fort William Sheriff Court, rooms were available for such use, on an *ad hoc* basis. He believed the plan for refurbishment should have made provision for such basic (Convention) requirements. He did not consider it acceptable for consultations to take place in public areas, and for the SCS to “deflect and avoid legitimate enquiry concerning the reason for the lack of such basic facilities, when such are clearly required by the Convention”. Mr Sweeney maintained that, as such facilities existed in all other courts, this demonstrated that such provision was necessary and that a degree of discussion and planning would have been conducted surrounding their provision. The information sought would allow him to compare the lack of facilities at Fort William Sheriff Court against any agreed standard for such provision by the SCS in general.

Whether information was held

13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
14. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect. In this case, the SCS did not issue Mr Sweeney with such a notice, given that it provided Mr Sweeney with some information in response to all parts of his request.
15. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held. While it may be relevant as part of this exercise to explore what information should be held, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.

¹ <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/1>

Part (i) - facilities at Fort William Sheriff Court

16. The SCS provided Mr Sweeney with an extract from its Health and Safety, Fire Safety and Security Audit conducted at Fort William Sheriff Court on 28 June 2013, relating to the use of the advocate's room. Mr Sweeney did not believe this information addressed this part of his request.
17. The SCS submitted it did not hold any further information falling within the scope of this part of the request and that all relevant information had already been provided to Mr Sweeney. It provided evidence of searches carried out.
18. In relation to these searches, the SCS provided an email from a senior staff member in the area covering Fort William Sheriff Court, confirming that searches had been carried out in the relevant electronic files, along with enquiries of current and former staff at the Court, prior to completing the review in Mr Sweeney's case. No further relevant information could be identified.

Part (ii) - SCS policy / practice across Scottish courts in general

19. The SCS provided Mr Sweeney with information relating to technical specifications and standards for custodial and non-custodial interview rooms. Mr Sweeney did not consider this to meet the terms of this part of his request.
20. The SCS submitted that it did not hold any further information falling within the scope of this part of the request and that all relevant information had already been provided to Mr Sweeney. It confirmed that it is not SCS policy or practice to provide facilities for agents to consult with clients who are not in custody. It referred to correspondence sent to Mr Sweeney on 10 April 2014 (prior to his request) advising him of this. This was reiterated in its initial response to his information request, and also reflected in a remark (referred to in its initial response) by its Chief Executive to the Justice Committee in May 2013²:

We have heard a lot of comments about meetings taking place in corridors. That is not something that we would support or propose as a solution. There are solicitors who, from time to time, use that as their way of doing business. We do not provide facilities in our courts for solicitors to do business with clients. That is work that should be done in advance before they come to court, and when they come to court we should have the right facilities for a court hearing to take place for children and family business, and that is what we have in Aberdeen. (Eric McQueen, Justice Committee Official Report, 21 May 2013, column 2802)

21. In relation to searches carried out, the SCS provided copies of internal email exchanges which resulted in the identification of the (mainly technical) information already provided to Mr Sweeney. The SCS explained that no additional policy material was identified.
22. These emails provided confirmation from SCS staff that they did not believe there was a duty to provide confidential facilities for solicitors to consult with clients who were not in custody. However, reference was made to the statutory duty to provide custodial interview facilities under the Criminal Procedure (Scotland) Act 1995³.

² <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8445&mode=pdf>

³ <http://www.legislation.gov.uk/ukpga/1995/46/contents>

23. These emails also evidenced that, during its initial searches, the SCS had also identified related information held within paragraph 3.38 of the SCS consultation document *Shaping Scotland's Court Services 2013*⁴. This made reference to inadequate interview facilities in five justice of the peace courts in towns where there was no sheriff courthouse (this list did not include Fort William). Further information was identified within paragraph 6.20 of the *Survey of Judicial Views of the SCS 2011*⁵, which included comments regarding a "... lack of private facilities for solicitors and social workers to interview their clients."

Further information provided to Mr Sweeney

24. On 5 December 2014, following discussions with the investigating officer, the SCS wrote to Mr Sweeney confirming that further checks had not identified any additional information to that already provided to him already. The SCS reiterated that it could not guarantee the availability of facilities for meetings between solicitors and clients who are not in custody, and also provided Mr Sweeney with the information identified in paragraph 23 above.
25. On 11 December 2014, Mr Sweeney informed the investigating officer that he was still dissatisfied. In his view, even if the SCS did not have a written "policy", it was inconceivable that there had been no discussions surrounding the provision of non-custodial client consultation facilities at Scottish courts (and no corresponding recorded information was held). Mr Sweeney argued that as such facilities existed in all courts other than Fort William, the issue must have been discussed.

Commissioner's conclusions

26. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the SCS interpreted Mr Sweeney's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held and which fell within the scope of those parts of the request under investigation. She is also satisfied that the additional information identified in paragraph 23 above has now been provided to Mr Sweeney.
27. The Commissioner notes that the common theme running through the communications supporting the SCS's searches and other enquiries is that it did not believe there to be any actual obligation to provide non-custodial client consultation facilities. However, it is not within the Commissioner's remit to decide what the legal requirements are for the provision of such facilities within Scottish courts.
28. The SCS has explained that it may make such facilities available within court premises, where available, but that such availability cannot be guaranteed. This appears to be consistent with any information identified by the SCS and provided to Mr Sweeney. It does not follow that there will be a policy on such provision: it is clear that the SCS occupies a range of court buildings, not all of which will be able to offer facilities of this kind on all occasions.
29. The Commissioner is satisfied that any policy stipulating a requirement to provide non-custodial client consultation facilities would, if held, have been identified during the searches undertaken by the SCS. Such searches would also have identified any relevant discussions. She is therefore satisfied that the SCS does not (and did not, on receiving the request) hold this information.

⁴ <http://www.scotcourts.gov.uk/consultations/docs/CourtStructures/ShapingScotlandsCourtServices.pdf>

⁵ <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/judicial-survey-2011-final-report.pdf?sfvrsn=2>

30. In relation to any recorded information pertaining to discussions and the like surrounding the provision of non-custodial client consultation facilities at Fort William Sheriff Court, bearing in mind that the SCS does not have a policy on the matter, the Commissioner is equally satisfied that such information is not held.
31. On the balance of probabilities, therefore, the Commissioner is satisfied in all the circumstances that the SCS did not hold any additional information to that already provided to Mr Sweeney.

Decision

The Commissioner finds that the Scottish Court Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Sweeney.

Appeal

Should either Mr Sweeney or the Scottish Court Service 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

22 January 2015

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.

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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info