Decision Notice 053/2020

Bankruptcy Act 1913

Applicant: The Applicant

Public authority: Scottish Courts and Tribunals Service

Case Ref: 202000139

Summary

The SCTS was asked for the rule a Trustee had used in connection with a specific administration under the Bankruptcy 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 17 December 2019, 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 and the Applicant asked for the rule the Trustee had used to continue the administration of the estate between certain dates.

2.   The SCTS responded on 15 January 2020. It advised that section 1(4) of FOISA confers a right to obtain recorded information held at the time of the request, not a right to receive analysis of the law. It issued a response in terms of section 17 of FOISA, advising the SCTS did not hold information on how judicial decisions were reached.

3.   On 20 January 2020, the Applicant wrote to the SCTS, requesting a review of its decision. He believed he had submitted a competent request, which had nothing to do with judicial decision-making.

4.   The SCTS notified the Applicant of the outcome of its review on 22 January 2020. It advised the Applicant that the administration of his estate had been a matter before the court on various occasions. It upheld the response, again explaining it did not hold information on how judicial decisions were reached.

5.   On 24 January 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 details of the administration in question, submitting that he believed the information requested should be held the SCTS.

Investigation

6.   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.

7.   On 4 February 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.

8. 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, with specific reference to the steps it had taken to identify and locate the information requested.

9. 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

10. 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

11. 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.

12. 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.

13. The Commissioner notes the submissions provided by the Applicant, in which he provides reasons why he considers the SCTS should hold the requested information.

14. In its submissions to the Commissioner, the SCTS confirmed the position that it held no record of the information requested by the Applicant.

15. 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, confirming that the information requested was not held. The conclusion of the searches and enquiries was that no information was held falling within the scope of the request under consideration.

16. 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).

17. 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

17 March 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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