



Scottish Information
Commissioner

Decision 003/2005 – Mr S and the Scottish Legal Aid Board

Request for home addresses of Board Members

Applicant: Mr S
Authority: Scottish Legal Aid Board
Application: 200500684
Date of Decision: 30 June 2005

Kevin Dunion
Scottish Information Commissioner

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Decision 003/2005 – Mr S and the Scottish Legal Aid Board

Request for home addresses of Board Members – decision to withhold – section 38(1)(b) – whether information is personal data – whether Article 6 of the European Convention of Human Rights has implications for the Commissioner’s decision.

Facts

Mr S asked the Scottish Legal Aid Board to supply the home addresses of Board Members, with a view to taking legal action against the estates of individual Board Members. The Scottish Legal Aid Board refused to provide this information on the grounds that it constitutes personal data and is exempt from disclosure under section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Outcome

The Commissioner found that the authority was correct in assessing the information to be personal data. The authority was justified in citing the exemption in 38(1)(b) of FOISA because the release of the home addresses of Board Members would breach the requirement to process personal data fairly, as laid down by the first data protection principle in schedule 1 of the Data Protection Act 1998. There is no requirement for the authority to supply the applicant with the information requested.

Appeal

Should either the Scottish Legal Aid Board or the applicant 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 of receipt of this notice.



Background

1. On 13 January 2005, the applicant made a request by email to the Scottish Legal Aid Board (SLAB) for the home addresses of Board members. His reason for asking for this information related to his intention to take legal action against the estates of individual Board members: Mr S believes that the actions of SLAB have breached his human rights and wants to bring an action against Board members at the European Court of Human Rights.
2. The applicant has made several related information requests to SLAB, two of which are the subject of separate decision notices (004/2005 and 005/2005).
3. On 14 January 2005, SLAB wrote to the applicant, refusing to send him the home addresses of Board members on the grounds that the information is exempt under section 38 of the Act, and disclosure to a member of the public would contravene the provisions of the Data Protection Act 1998 (DPA).
4. The letter also pointed out that SLAB is a corporate body which sues and is sued in its own right, and advised that legal actions against the Board should be served at SLAB's address.
5. The applicant sought a review of this decision, contacting SLAB by email on 17 January 2005. His reason for dissatisfaction with the decision is his belief that SLAB is a tribunal and as such is required by Article 6 of the European Convention on Human Rights to be impartial. Mr S stated that this requires the disclosure of information to allow any wrong doing to be legally challenged, to allow him to seek redress under the European Convention on Human Rights and to seek proof that SLAB acts impartially. He believes that Article 6 of the European Convention on Human Rights requires the Board to be accountable for its impartiality and this obligation means that the Board cannot use the DPA to avoid disclosing information required for this purpose.
6. After reviewing the request SLAB wrote back to the applicant on 10 February 2005, confirming the original decision to withhold the information on the grounds that it constituted personal data and was exempt from disclosure under FOISA.
7. Mr S then applied to me for a decision, in an email sent on 23 February 2005.

The Investigation

8. The applicant's appeal was validated by establishing that he had made a request to a Scottish public authority, and had appealed to the Commissioner only after requesting the authority to review its decision to withhold information.



9. A letter was sent to SLAB on 10 March 2005, informing it that an appeal had been received and that an investigation into the matter had begun.
10. SLAB was asked:
 - to confirm that it was relying specifically on section 38(1)(b) of FOISA (the decision notice issued to the applicant following its review of the case simply referred to section 38);
 - to explain its reasons for applying this exemption to the information requested;
 - whether there exists any legal obligation on Board members to disclose their home addresses as a condition of appointment;
 - whether the home addresses of Board members have ever been made available on request previously;
 - whether Board members had been asked if they would object to the release of their home addresses; and
 - whether Board members have received any assurances that their home addresses would not be disclosed.
11. In reply, SLAB provided:
 - confirmation that the Board had relied on section 38(1)(b) of FOISA;
 - its reasons for citing this exemption in relation to the information requested, namely that a personal address is personal data as defined in section 1(1) of the Data Protection Act 1998, the release of which would breach data protection principle 1 as none of the conditions of Schedule 2 of the DPA have been met;
 - confirmation that there is no legal obligation on Board members to disclose their home addresses as a condition of their employment;
 - confirmation that home addresses of Board members have not previously been made available on request, other than internally, and in confidence, within the Board for the purposes, for example, of distribution of papers in advance of meetings;
 - confirmation that there is no record of Board members being asked specifically if they object to the release of their home addresses, but that copies of correspondence are held dating back to August 2003 in which a Board solicitor advised all Board members that the applicant had asked the Scottish Executive to provide information about their home addresses. The Scottish Executive had refused to provide the information and Members were assured that SLAB would also refuse to disclose personal information. This letter was followed up at a Board meeting in September 2003 in which a paper summarising these matters was considered and approved.
12. The investigating officer asked SLAB to supply copies of the correspondence with Board members on this subject and a copy of the paper approved at the Board meeting in September 2003. This was received on 26 May 2005.



13. As mentioned in paragraph 4, SLAB had informed the applicant that it is a corporate body which sues and is sued in its own right. In relation to this point the investigating officer asked whether a Board member would ever be personally liable if, for example, they acted outwith their powers or acted in bad faith. SLAB referred the investigating officer to guidance from the Scottish Public Finance Manual, to the effect that relevant claims established against a board member who had acted honestly and in good faith will be met from funds provided to SLAB by the Scottish Ministers.
14. SLAB further advised that the applicant has previously raised an unsuccessful action in which he named a list of past and present members of staff and Board Members. The action was served at SLAB's corporate office and the court took no issue with the Board defending it in its corporate capacity. The court refused the applicant's demand for the home addresses of those named members of staff and Board Members. There is therefore no need for the applicant to know the home addresses of a Board member in order to raise a court action against him or her.

The Commissioner's Analysis and Findings

15. The main issue to be addressed is whether the information requested by the applicant constitutes personal data, as defined by the Data Protection Act 1998 (the DPA), and whether the release of the information under FOISA would contravene any of the data protection principles and so justify SLAB in withholding the information under section 38(1)(b).
16. The applicant also raised a secondary issue in his request for a review of the decision, which he asked the Commissioner to address using his powers under FOISA. This is the requirement for SLAB to be accountable for their impartiality under the European Convention on Human Rights.
17. The issue outlined in paragraph 16 will be dealt with first in this decision.

European Convention on Human Rights and its implications for this case

18. Article 6 of the European Convention on Human Rights states that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
19. The applicant believes that SLAB is a tribunal (this point is made clearly in his correspondence with the Board in relation to a separate case, decision 004/2005. His email dated 15 January 2005 states "As the legal Aid board act as a tribunal...")
20. In a letter to the applicant dated 17 January 2005, SLAB stated "...the Board does not act as a tribunal. The Legal Aid (Scotland) Act 1986 sets out the general functions, powers and duties of the Board." (correspondence relating to decision 004/2005)



21. In the context of this decision, the issue of whether SLAB acts as a tribunal is not relevant as the Scottish Information Commissioner is only empowered to enforce FOISA and has no jurisdiction regarding the responsibilities of SLAB under the European Convention on Human Rights.
22. The Commissioner will therefore not address this issue in his decision notice.

Use of section 38(1)(b) to withhold the information

23. SLAB cited only section 38(1)(b) as grounds for withholding the information requested in this case. Therefore, the investigation focused on whether this exemption had been correctly applied to the information requested by the applicant.
24. Section 38(1)(b) allows Scottish public authorities to withhold information if it is “personal data” and if it satisfies either of the conditions laid down in sections 38(2) or 38(3) of FOISA. Section 38(2)(a)(i) exempts information where the disclosure of personal data would contravene any of the data protection principles.

Is the information “personal data”?

25. Section 1(1) of the DPA defines personal data as “data which relate to a living individual who can be identified (a) from those data”. Clearly, home addresses of Board Members, together with the names of the Board Members in question, fall within this definition.

Would release of the information breach data protection principles?

26. The first data protection principle laid down in Schedule 1 of the DPA is that personal data shall be processed fairly and lawfully. The question to consider here is whether the release of the home addresses of Board Members would be fair and lawful.
27. The Information Commissioner, who is responsible for regulating the DPA, has provided guidance on factors to take into account when considering a request for the release of personal data about a third party. In thinking about “fairness”, consideration should be given to whether the information relates to the private or public life of the individual. Information about an individual’s home life is likely to deserve protection and the Commissioner’s guidance states: “information such as home addresses...would not normally be disclosed”.
28. The Information Commissioner’s guidance also advises that before a decision is taken to release personal data, the data controller should consider whether employees have been told that information about them will be disclosed, or what their reasonable expectations about disclosure are. In this case, SLAB has produced documents showing that Board Members were given an assurance that their home addresses would not be released. This followed a previous request by the applicant for this information, which, taken in context with his strong views about the actions of SLAB, was seen as potentially threatening to individual Board Members. In this situation disclosure of home addresses would contravene the first data protection principle on the basis that the disclosure would not be fair. In the circumstances I do not need to consider whether the disclosure would be lawful.



29. The Board Members' expectation that their home addresses would not be released is also supported by the outcome of the court decision referred to in paragraph 14 above .
30. SLAB has commented, with regard to a related investigation, that its opposition to the release of personal data relating to individual members of staff is not limited to the case of Mr S. "We encounter our customers within the context of contentious civil or criminal legal problems or court cases. Within such a contentious environment, emotions are often highly charged, and feelings of anger or grievance are often used on decision-makers...this has from time to time manifested itself in the form of actual abuse or of threats of violence against Board staff."

Conclusion

31. In my view, release of the home addresses of Board Members would be a breach of the requirement to process information fairly. SLAB has provided evidence to show that the release of this information could put Board Members at risk of harassment. There is nothing relating to the public duties or responsibilities of the Board Members which might require the release of their home addresses, and assurances have been provided to Members that this information would not be made public. SLAB has applied exemption 38(1)(b) correctly and its decision to withhold the home addresses of Board Members is upheld.

Decision

I find that the authority has dealt with the applicant's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002, as detailed in paragraphs 23-31 above.

Kevin Dunion
Scottish Information Commissioner
30 June 2005