

Decision Notice



Decision 155/2011 William Beck and the Scottish Criminal Cases Review
Commission

Copy of a statement of reasons

Reference No: 201100744
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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Beck requested from the Scottish Criminal Cases Review Commission (the SCCRC) the statement of reasons issued by the SCCRC in relation to a named individual. The SCCRC responded by advising Mr Beck that it considered the information to be exempt from disclosure in terms of section 26(a) of FOISA due to a prohibition on disclosure contained in section 194J of the Criminal Procedure (Scotland) Act 1995 (the CPSA). Following a review, Mr Beck remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the SCCRC was prohibited from disclosing the information requested by Mr Beck, and so had correctly applied the exemption in section 26(a) of FOISA to the information.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(b) (Effect of exemptions) and 26(a) (Prohibitions on disclosure)

Criminal Procedure (Scotland) Act 1995 (the CPSA) sections 194J (Offence of disclosure) and 194K (Exceptions from obligations of non-disclosure)

The Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 (the 2009 Order) preamble and article 2 (Permitted disclosure of information)

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

1. On 9 March 2011, Mr Beck emailed the SCCRC requesting the statement of reasons issued by the SCCRC in relation to a case involving a named individual.
2. The SCCRC responded on 11 March 2011. In its response, the SCCRC advised Mr Beck that it considered the information to be exempt from disclosure in terms of section 26(a) of FOISA on the basis that a prohibition on disclosure of the information existed under section 194J of the Criminal Procedure (Scotland) Act 1995 (the CPSA).



3. On 23 March 2011, Mr Beck emailed wrote the SCCRC requesting a review of its decision. In particular, Mr Beck commented that the case in question had been debated in the public arena and so he considered the information to be public knowledge. He commented that he could not see how the SCCRC could rely upon the exemption under section 26(a) of FOISA.
4. The SCCRC notified Mr Beck of the outcome of its review on 18 April 2011, upholding its previous decision in full.
5. Also on 18 April 2011, Mr Beck wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SCCRC's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Beck 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

7. On 11 May 2011, the SCCRC was notified in writing that an application had been received from Mr Beck and was asked to provide the Commissioner with any information withheld from him. The SCCRC responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the SCCRC, 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 SCCRC was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The SCCRC responded on 22 June 2011. The SCCRC confirmed that it considered the requested information to be exempt from disclosure in terms of section 26(a) of FOISA on the basis that section 194J of the CPSA creates a prohibition on disclosure. It provided submissions in support of this conclusion.

Commissioner's analysis and findings

10. 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 Beck and the SCCRC and is satisfied that no matter of relevance has been overlooked.



Consideration of section 26(a)

11. Section 26(a) of FOISA exempts information under FOISA where disclosure of the information is prohibited by or under any enactment. This is an absolute exemption in that it is not subject to the public interest test set down in section 2(1)(b) of FOISA.
12. The SCCRC has argued that the disclosure of the information requested by Mr Beck is prohibited by another piece of legislation, in this case section 194J of the CPSA.
13. The SCCRC has argued that section 194J of the CPSA prohibits the disclosure of any information obtained by the SCCRC in the exercise of any of its functions unless the disclosure of the information is excepted by section 194K of the CPSA. (Sections 194J and K are set out in full in the Appendix).
14. The SCCRC submitted that the requested information had been obtained by it in the exercise of its functions under the CPSA i.e. to decide whether to refer an applicant's case to the High Court for determination.
15. In this case, the Commissioner is satisfied that the information under consideration has been obtained by the SCCRC in the exercise of its functions under the CPSA. It is therefore necessary for the Commissioner to go on to consider whether any of the exceptions contained in section 194K of the CPSA are applicable in the circumstances of this case.
16. The SCCRC submitted that none of the conditions in section 194K would permit the disclosure of the information in this case. With specific reference to the exception specified in section 194K(1)(f), the SCCRC noted the terms of The Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 (the 2009 Order), which provides that disclosure of information is permitted in the circumstances set out in article 2 of the 2009 Order. (Article 2 is set out in full in the Appendix). However, the SCCRC submitted that the these circumstances were not applicable in this case.
17. In the circumstances, therefore, the SCCRC submitted that the section 194J prohibition on disclosure of information applied and that, as such, the information requested by Mr Beck was exempt from disclosure under section 26(a) of FOISA
18. Having carefully considered the terms of section 194K of the CPSA and article 2 of the 2009 Order, the Commissioner has concluded that none of the conditions allowing disclosure set out in section 194K can be met in this case, and that disclosure of the information is therefore prohibited by section 194J of the CPSA.
19. The Commissioner therefore agrees with the SCCRC that the disclosure of the information under FOISA would constitute a breach of section 194J of the CPSA and that the disclosure of the information requested by Mr Beck is exempt in terms of section 26(a) of FOISA.
20. In reaching this conclusion, the Commissioner notes Mr Beck's submission that the outcome of the SCCRC's review had already been the subject of a press release on its own website and had been debated in open court.



21. The Commissioner notes that the press release emphasises that the SCCRC has no statutory power to make copies of its statements of reasons available to the public and that the summary provided in the press release is for information purposes only and does not form part of its statement of reasons.
22. However, this does not detract from the fact that section 26(a) of FOISA prohibits the disclosure of the information under FOISA.

DECISION

The Commissioner finds that the Scottish Criminal Cases Review Commission complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Beck.

Appeal

Should either Mr Beck or the SCCRC 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.

Kevin Dunion
Scottish Information Commissioner
08 August 2011



Appendix

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.

...

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

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (b) section 26;

...

26 Prohibitions on disclosure

Information is exempt information if its disclosure by a Scottish public authority (otherwise than under this Act)-

- (a) is prohibited by or under an enactment;

...



Criminal Procedure (Scotland) Act 1995

194J Offence of disclosure

- (1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 194K of this Act.
- (2) A member of the Commission shall not authorise the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions unless the authorisation of the disclosure of the information is excepted from this section by section 194K of this Act.
- (3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

194K Exceptions from obligations of non-disclosure

- (1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed –
 - (a) for the purposes of any criminal, disciplinary or civil proceedings;
 - (b) in order to assist in dealing with an application made to the secretary of State for compensation for a miscarriage of justice;
 - (c) by a person who is a member or an employee of the Commission to another person who is a member or an employee of the Commission;
 - (d) in any statement or report required by this Act;
 - (e) in or in connection with the exercise of any function under this Act; or
 - (f) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.
- (2) The disclosure of information is also excepted from section 194J of this Act by this section if the information is disclosed by an employee of the Commission who is authorised to disclose the information by a member of the Commission.
- (3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed for the purposes of –



- (a) the investigation of an offence; or
- (b) deciding whether to prosecute a person for an offence,

unless the disclosure is or would be prevented by an obligation or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

- (4) Where the disclosure of information is excepted from section 194J of this Act by subsection (1) or (2) above, the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.
- (5) The power to make an order under subsection 1(f) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

The Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by section 194K(1)(f) of the Criminal Procedure (Scotland) Act 1995 and all other powers enabling them to do so.

...

2. Permitted disclosure of information

The disclosure of information is permitted in the following circumstances—

- (a) the information relates to a case that has been referred to the High Court under section 194B(1) of the Act and—
 - (i) is, or includes, a reference of a conviction, or a finding under section 55(2) of the Act, where
 - (ii) the appeal, consequent on that reference, has been abandoned in terms of sections 116 or 184 of the Act;
- (b) any person who provided the information to the Commission (whether directly or indirectly) has consented to its disclosure; and
- (c) a decision that the information should be disclosed has been taken by the Commission.