

Decision Notice 152/2020

Bankruptcy (Scotland) Act 1913

Applicant: The Applicant

Public authority: Scottish Courts and Tribunals Service

Case Ref: 202000414 and 202000415



Scottish Information
Commissioner

Summary

The SCTS was asked for information in relation to a specific administration in terms of the Bankruptcy (Scotland) Act 1913.

The SCTS refused to respond on the basis that it considered the requests to be vexatious

The Commissioner investigated and found that the SCTS was entitled to rely upon section 14(1) of FOISA, on the basis that the requests were vexatious.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests).

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 4 February 2020, the Applicant made two separate requests 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. The Applicant asked for:

Request 1:

Section or Rule of Bankruptcy (Scotland) Act 1913 that entitled the Sheriff [name removed] at the Sheriff Court Dumfries to elect trustee to take any estate and administrate it when the debt had been paid in full and paid to recall the sequestration [date in 1976]

Request 2:

Section or Rule under the Bankruptcy Act 1913 that allowed [named company A] to be sisted while the pursuer [named company B] were still in the process of sequestration
2. The SCTS responded to both of the Applicant's requests on 20 February 2020. For each of these requests, the SCTS responded in terms of section 14(1) and 14(2) of FOISA, on the basis that it considered the requests to be both vexatious and repeated.
3. The SCTS drew the Applicant's attention to three responses it had provided him on 18 December 2019, following requests for:
 - the rule of court that entitles a named sheriff to grant motion for debate
 - the rule of court that entitled a named sheriff to grant defenders motion to debate
 - the rule of court that entitled named judges to make a vexatious order
4. It explained that these responses had set out the position that decisions made in a court case are matters for the judge and that the SCTS does not hold information on how judicial decisions are made. The responses had also advised that the SCTS plays no part in judicial decisions and is unable to analyse the law or explain how a member of the judiciary reached a decision.

5. The SCTS provided the Applicant with a list of eight further requests it had received from him between 17 December 2019 and 5 February 2020, seeking the rule of court that had been considered in various court cases. It advised that a further three requests had been received since 5 February 2020, again seeking rules of court.
6. The SCTS stated that the examples provided was not an exhaustive list, confirming that, in all the circumstances, it was applying section 14(1) of FOISA, as responding imposed a significant burden on, and had the effect of harassing, the SCTS. It also provided reasoning in support of its application of section 14(2).
7. On 24 February 2020, the Applicant wrote two separate letters to the SCTS requesting a review of both of its responses on the basis that he disagreed that his requests were vexatious. The Applicant disagreed that the previous responses referred to were relevant to his requests. In relation to request 1, the applicant also made comment that the appointment of the trustee was in breach of the Bankruptcy Act 1913, and that his request was not vexatious.
8. On 25 February 2020, the Applicant again wrote two letters to the SCTS, requesting a review of its responses relating to requests 1 and 2 respectively. He did not agree with the SCTS's characterisation of his requests.
9. The SCTS notified the Applicant of the outcome of its respective reviews on 26 and 27 February 2020. In each review, the SCTS advised that the reasons provided in the relevant response had been considered, with the fact that his requirements for review appeared to be continuing an argument about historical court cases, concluding that a review would not be carried out.
10. In effect, the SCTS responded in terms of section 21(8)(b) of FOISA, which does not oblige an authority to comply with a requirement for review if the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
11. On 21 March 2020, following further correspondence sent to the SCTS, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with his requests being considered refused under section 14 and again made reference to the 1976 court case to support his position.

Investigation

12. The Applicant's applications regarding requests 1 and 2 were considered to be valid. The Commissioner confirmed that the Applicant made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
13. On 28 July 2020, the SCTS was notified in writing that the Applicant had made a valid application regarding request 2. On 7 August 2020, the SCTS was advised that the Applicant had made a valid application regarding request 1. The cases were conjoined and allocated to an investigating officer.
14. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 10 September 2020, the SCTS was invited to comment on this application and to answer specific questions, focusing on its application of section 14(1) and 14(2) of FOISA.

15. The Applicant was also given the opportunity to comment on why he disagreed that his requests were vexatious. Both parties provided submissions, which are considered further below.

Commissioner's analysis and findings

16. 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.

Section 14(1) – vexatious requests

17. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information made under section 1(1) if the request is vexatious.
18. FOISA does not define the word “vexatious”. The Commissioner’s general approach, as set out in his guidance on section 14(1)¹, is that the following factors are relevant when considering whether a request is vexatious. These are that the request:

- would impose a significant burden on the public authority
- does not have a serious purpose or value
- is designed to cause disruption or annoyance to the public authority
- has the effect of harassing the public authority
- would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.

This is not an exhaustive list. Depending on the circumstances, and provided the impact on the authority can be supported by evidence, other factors may be relevant.

19. The Commissioner recognises that each case must be considered on its merits, taking all relevant circumstances into account. The term “vexatious” must be applied to the request and not the requester, but an applicant’s identity, and the history of their dealings with the public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

The Applicant's submissions

20. In his submissions to the Commissioner, the Applicant stated that his requests could not be treated as being vexatious when the SCTS was in breach of the rules, referring to section 33 of the Bankruptcy Act 1913.

The SCTS's submissions

Significant Burden and effect of harassing the authority

21. The SCTS submitted that dealing with the Applicant’s requests would impose a significant burden on the SCTS and have the effect of harassing the authority. It stated that the requests involved a number of areas of its organisation, and that they demonstrated a continuation of a pattern of behaviour that appeared to be the continuation of his arguments in relation to historical cases, rather than seeking to obtain information. The SCTS provided evidence to support its submissions.

¹ [http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious or repeated requests.aspx](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious%20or%20repeated%20requests.aspx)

22. In its submissions to the Commissioner, the SCTS provided a history of the Applicant's correspondence and details of the administration in question. The Commissioner cannot provide details of all of the submissions received, as to do so may result in the publication of personal data, which is not necessary or justified in the circumstances.
23. The SCTS submitted that the Applicant frequently submitted requests in lengthy correspondence, narrating the circumstances of cases dating back to 1975 which had already been addressed in correspondence dating back over forty years. It explained that, since 1976, the Applicant had regularly submitted correspondence on matters which had been the subject of Court decisions. It explained that such correspondence on these matters was dealt with under the SCTS's Unacceptable Actions Policy and not responded to.
24. Noting the high number of requests on same subject and SCTS's position being unlikely to change, the SCTS submitted that responding to such requests diverted resources away from dealing with other requests and correspondence.
25. In support of its submissions, the SCTS explained that, between December 2019 and February 2020, the SCTS received 20 letters from the Applicant requesting "Rules of Court" on various matters.
26. The SCTS also noted that, between 20 February 2020 and 22 September 2020, it had received a further 18 requests. The SCTS provided a summary of these 18 requests, submitting that all of them were on similar topics, all asking for "rules of law" or "rules of court".
27. The SCTS submitted that in many of his requests the Applicant had made it explicitly clear that he was making the requests because the SCTS would not put his "applications, or motions before a Judge" and because the "Chief Executive ... failed to respond over decades to my complaint" and "the S.C.T.S have failed to admit the Sequestration of my estate was unlawful ..."
28. The SCTS submitted that such statements reinforced the argument that the Applicant's motivation in making freedom of information requests was not to obtain information, but to continue dialogue with the SCTS and the judiciary when all other avenues of correspondence had been removed. It submitted that the Applicant's sole motivation was to continue to raise matters dating back over forty years, which had been addressed and which SCTS had no power to change.

The Commissioner's conclusions

29. The Commissioner has taken account of all of the submissions received from both the Applicant and the SCTS. He has also given consideration to the history of the Applicant's interaction with the SCTS, over many years, and the previous correspondence referred to.
30. The Commissioner notes that request 1 above was contained in a letter to the SCTS Chief Executive. In this letter, the Applicant made comment on the Sheriff Court administration procedures in 1976, stating that he believed certain provisions of the Bankruptcy (Scotland) Act 1913 had been breached.
31. The Applicant's request 2 was also contained in a letter to the SCTS Chief Executive. In this letter, he commented that he believed the certain aspects of the Court proceedings were incompetent, flawed and that certain provisions of the Bankruptcy (Scotland) Act 1913 had been breached.

32. The Commissioner further notes the contents of the Applicant's letters of 25 February 2020, as mentioned above. These letters, again, are focused substantially on challenging the competency of actions of the Court and the Sheriff Clerk in 1976. Overall, the main focus of the Applicant's correspondence with the SCTS appears to be his dissatisfaction with the outcome of the administration process dealt with by the Courts in 1976 and subsequently.
33. In addition to being previously advised by the SCTS that it does not hold information relating to the decisions made by the Courts, as outlined above, the Commissioner has since issued three Decision Notices: *053/2020²*, *121/2020* and *122/2020*. In each of these decisions, the Commissioner found that the SCTS correctly advised that Applicant that it did not hold information relating to Rules of Court, that may or may not have been applicable to the administration process considered by the Courts in 1976.
34. Taking account of the history between the parties, the Commissioner accepts the SCTS's position that dealing with the Applicant's requests imposes a significant burden on the SCTS and has the effect of harassing the SCTS. The requests appear to have no other purpose than to continue a very long-running argument through the medium of Freedom of Information, as opposed to fulfilling the intended purpose of the legislation in extracting information from a Scottish public authority. There must come a point where the Commissioner has to find such conduct to be an abuse of the legislation he has been appointed to administer.
35. In the circumstances, the Commissioner is satisfied that the Applicant's dissatisfaction with the outcome of the administration process concerned would not be alleviated by the SCTS responding to his requests. The Applicant has been advised, on a number of occasions, that the SCTS does not hold the type of information that he is requesting, and it is now readily apparent that such advice is making no difference to his pursuit of requests of this kind. The Commissioner is satisfied that responding to these requests would have no effect except to prolong correspondence on matters which appear to have been fully considered and dealt with through the Court process (and which certainly cannot be resolved through continual information requests as to which requirements applied to a particular aspect of the process more than forty years ago).
36. The Commissioner therefore accepts that the SCTS was entitled to conclude that the Applicant's requests were vexatious in terms of section 14(1) of FOISA. He does not find it necessary to consider, in addition, the SCTS's application of section 14(2).

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 requests made by the Applicant.

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2020/202000139.aspx>

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

30 November 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.

...

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

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info