



Scottish Information
Commissioner

it's public knowledge

Our Ref 201901840

Your Ref

Mr Richard Page

Request-609344-9ef6645e@whatdotheyknow.com

22 October 2019

Dear Mr Page

Information request- identity of requester

I am writing in response to your email of 6 October 2019. Your email asks for information related to our policy on the identity of requesters. You asked for:

"What recorded information exists regarding the policy of the Scottish ICO in relation to complaints made on behalf of someone else?"

Has the Scottish ICO obtained a legal opinion on this issue? What was the outcome of this?

What is the statutory authority for requiring the name of a person who has had a complaint made on their behalf?"

I confirm that we hold information regarding our policy on the true identity of requesters as detailed in the attached schedule.

I can also confirm that we obtained legal advice on this issue (copies attached).

Section 8 of the Freedom of Information (Scotland) Act 2002 (FOISA) is the statutory basis for determining the true applicant. Section 8 sets out what a request must include being valid. If a request is invalid, the public authority is under no obligation to comply with the request, though it should contact the person in order to meet its duty to provide advice and assistance. The Commissioner has no power to carry out an investigation into invalid requests or to order the authority to disclose information.

Section 8(1)(b) of FOISA makes it clear that the request must state the name of the applicant to be valid.

Anyone can make a request on behalf of another person (e.g. a solicitor on behalf of a client, or an elected official on behalf of a constituent). However, the person whose behalf the request is being made must be named or the request is not valid. (One of the documents being disclosed in response to your request is a Court of Session judgment on this point.)

In response to your request for information, I am pleased to provide the following:

1. Our briefing 'Information requests: the name of the requester or applicant'. This is available on our website: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Nameofrequesterorapplicant.aspx>
2. Legal advice dated September 2005: Pseudonyms and Addresses
3. Legal advice dated October 2005: Advice note on requests for information by solicitors
4. Extract from our Investigations Handbook (page 47, paragraphs 294-302) A full copy of our Investigations Handbook can be viewed here: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx>
5. Court of Session judgment: Glasgow City Council v. Scottish Information Commissioner [2009] CSIH 73.. This case involved a request made to a public authority by a firm of solicitors on behalf of an unnamed client. The Court of Session concluded that, because the request did not name the "true applicant" (i.e. the client), the request was invalid:
<http://www.scotcourts.gov.uk/search-judgments/judgment?id=cc8f86a6-8980-69d2-b500-ff0000d74aa7>

Information otherwise available

FOISA allows a Scottish public authority to withhold information in response to a request, if an exemption in FOISA applies.

In this case, I have applied the exemption in section 25 of FOISA (Information otherwise accessible) to documents 1, 4 and 5 as listed in the schedule. These documents are available in the public domain (if you click on the links above or in the schedule the documents will open) and so comprise of information you can reasonably obtain other than by requesting it under section 1(1) of FOISA.

UK Information Commissioner

You suggest that the UK Information Commissioner's (the ICO's) position differs from ours. We understand that the ICO's position aligns with our own, as detailed in the following guidance (see paragraphs 40-44): <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

Right to re-use information

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Right to seek a review

While we believe we have complied with your information request in full, you may (if you are unhappy with this response in any way) ask us to review the way your request has been handled. If you wish to do this, you should make your request for review to the Commissioner, at the address below, within 40 working days of receiving this letter/email. Your request must be in permanent form (letter, email, audio tape, etc.) and should state:

Scottish Information Commissioner
Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS
T: 01334 464610 F: 01334 464611 E: enquiries@itspublicknowledge.info W: itspublicknowledge.info

- that you are asking for a review of this decision and
- why you are unhappy with the response you have received.

We will issue a full response to your request for review within 20 working days of receiving it.

Please contact me if you would like clarification of any of the points in this letter.

Yours sincerely

Claire Stephen
Deputy Head of Enforcement