



Jonathan Baines  
c/o  
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4 September 2014

Corporate Communications  
1A Parliament Square  
Edinburgh  
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Dear Mr Baines

**Freedom of Information Request FOI2014156**

I refer to your recent email dated 14 August 2014 regarding the recent publication by the Lord Justice General of a notice of Advance Access to the Media to Court Documents. You requested '*any information relating a) to this review and b) to significant concerns arising from the DPA*'.

A search of Scottish Court Service records has revealed one policy paper from 2013 that falls within the scope of your request. The Judicial Office for Scotland has also advised that it does hold information, on behalf of the Lord President, that would also be covered by your request, but the Judicial Office is under no obligation to release information it holds on behalf of the Lord President. The Judicial Office provides support in the carrying out of his statutory functions as head of the Scottish judiciary. Such information is outwith the provisions of the Freedom of Information (Scotland) Act 2002 ("FOISA") as the Lord President is not a Scottish Public Authority in terms of section 3(1) of and Schedule 1 to the Act, and accordingly this constitutes information held on behalf of another person in terms of Section 3(2)(a)(i) of the Act, and falling outwith the provisions of the Act in relation to provision of information.

In relation to the 2013 policy paper which is held by the Scottish Court Service in its own right, we consider that this paper must be withheld as it is subject to exemptions under FOISA. The exemptions have been applied are as follows:

**Formulation of Scottish Administration Policy etc.**

An exemption has been applied under section 29(1)(a) of FOISA as the policy paper concerns policy options on the SCS's interaction with the media. Policy development on this issue is ongoing and we consider that the public interest in allowing full and frank consideration of options outweighs the public interest in disclosure.

**Free and frank provision of advice**

An exemption has also been applied under section 30(b) of FOISA as the policy paper contains policy advice on a range of options. Release of this information – in particular whilst policy development is ongoing - would be likely to inhibit substantially

the free and frank provision of advice by officials. We consider that the public interest in disclosure is outweighed by the need to ensure rigorous and informed policy development.

### **Legal Advice**

The policy paper contains a substantial amount of information which we consider requires to be withheld under section 36(1) of FOISA ("information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings"). It contains information subject to legal advice privilege and in assessing the public interest test which applies to this exemption; we have concluded that the public interest in maintaining the confidentiality of communications between legal advisor and client in this case is such as to prevent release.

Regarding your reference to breaches of the Data Protection Act I will draw your attention to previously published information on page 23 of the Scottish Court Service Annual Report and Accounts at

[www.scotcourts.gov.uk/docs/default-source/SCS-Annual-Report/scourts\\_annrep-interactive2.pdf?sfvrsn=2](http://www.scotcourts.gov.uk/docs/default-source/SCS-Annual-Report/scourts_annrep-interactive2.pdf?sfvrsn=2). Any other information held relating to breaches is intended for future publication within the 2013-2014 Annual Report due to be published within 12 weeks (Section 27 of FOISA).

### **Review**

I hope you find this information of assistance. However should you feel dissatisfied with this decision or the manner in which your request has been handled, the Act provides for a review process to be conducted. Should you wish to take advantage of this process you may apply in writing for a review. Your request should provide details of why you wish a review to be carried out and should be made within 40 working days of receipt of this letter to:-

The Freedom of Information Officer  
Scottish Court Service  
Saughton House – Spur N1  
Broomhouse Drive  
Edinburgh  
EH11 3XD  
[foi@scotcourts.gov.uk](mailto:foi@scotcourts.gov.uk)

Following that review, should you still feel dissatisfied, you have the right to lodge a complaint with the Scottish Information Commissioner at the following address:-

Office of the Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St. Andrews  
FIFE  
KY16 9DS

Yours sincerely

Susan Whiteford  
Head of Corporate Communications  
[communications@scotcourts.gov.uk](mailto:communications@scotcourts.gov.uk)