

Scottish Courts and Tribunals Service



Stephen Leighton

By email: request-512569-
70adcc8e@whatdotheyknow.com

Scottish Courts and Tribunals Service HQ
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Date: 18th October 2018

Our Ref: FOI 2018 143 /C2018-496

Dear Mr. Leighton,

Freedom of Information (Scotland) Act 2002 (FOISA)

Thank you for your email of 23rd September 2018 in which you requested a review of Mrs. Warner's response to your request of 23rd August 2018 which sought:

Is it standard practice for a joint minute to be agreed between a solicitor acting for a pursuer and a curator ad litem acting on behalf of the defender, for the defender to burden all associated costs of court action?

I have been asked to conduct the review.

An element of your request for review is in relation to the timing of the response. Having considered this aspect I note that your request was received by the Scottish Courts and Tribunals Service (SCTS) on 23rd August 2018. In accordance with section 10 of FOISA a response was due not later than the twentieth working day after that date – being 20th September. As a number of requests were received from you around that time period – all appearing to have some similarities in terms of the content relating to procedures in civil cases – a collective response was prepared and issued by Mrs. Warner on 19th September. Although this was within the prescribed period in terms of FOISA, as the individual requests emanated from a number of email addresses, it would appear that the response in relation to the matter narrated above may not have been associated with the relevant email address, giving the impression that a response had not been issued. I am sorry for any confusion that this may have caused and we will note this for any future instances. For completeness I have attached a copy of the original response.

In reviewing the response, in addition to considering the timing aspect, I have also considered the terms of your request and the details contained in Mrs. Warner's reply. In so doing I feel I must reiterate the point made by Mrs. Warner that, while the freedom of information legislation provides a right to obtain existing information from public

authorities, it does not provide a right to expect that advice or analysis will be provided or questions in relation to court proceedings will be answered.

I will however attempt to provide some clarification in this letter, although I would stress that it would be entirely inappropriate for the officials of the SCTS to provide you with legal advice or express any views on procedure. Decisions made in cases are a matter for the presiding judge having regard to the circumstances of individual cases and accordingly the SCTS does not hold any information on standard procedure and your request is therefore refused under section 17 of FOISA as information not held. I am sorry that the refusal on this basis was not made clear in the original response.

I can however provide the following links to relevant legislation which may be of interest:

Divorce (Scotland) Act 1976: <https://www.legislation.gov.uk/ukpga/1976/39/section/11>

Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993: <http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/ordinary-cause-rules> (special provisions in relation to particular causes)

I have also provided the following link to the Law Society of Scotland should you wish to seek legal advice in relation any particular matter:

<https://www.lawscot.org.uk/>

I hope this explanation is of assistance, however if you are dissatisfied with this response to your review request, or any other aspect of this case, you have the right to lodge a complaint with the Scottish Information Commissioner at the following address within 6 months of the date of this letter:-

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

Or online:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

Following receipt of the Commissioner's decision, there is scope to submit 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 the decision notice.

Yours sincerely

M Mackie

Margo Mackie
Senior Information Officer

Scottish Courts and Tribunals Service



Stephen Leighton

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19th September 2018

Our Ref: C2018-496

Dear Mr. Leighton,

Freedom of Information (Scotland) Act 2002 (FOISA)

Thank you for the three requests for information received by this office on the 22nd August 2018. In relation to your requests in the following terms:

1. *Could you give me the legal difference in court divorce court proceedings between 1 year non cohabitation and 2 years non cohabitation – both with and without consent from the pursuer Does the threshold of 2 years superseded 1 year?*
2. Is it standard practice for a joint minute to be agreed between a solicitor acting for a pursuer and a curator ad litem acting on behalf of the defender, for the defender to burden all associated costs of court action?
3. I am asking this in context of prior to 1st July 2017- can a curator ad litem be allocated to a defender in a civil case of decree of divorce, even though the defender has been assessed as having capacity?

What should happen if it becomes clear to a curator ad litem that the defender has capacity to agree/understand the decree- should the curator discharge themselves? What law would the curator ad litem be breaking if they didn't discharge themselves once it became clear the defender was assessed as having capacity to agree/ be the party litigant in their decree? If the curator didn't discharge themselves - would they be breaking any law? Would this be a breach of civil law, or criminal law?

Is a curator ad litem allowed to have any say/involvement in the defenders property, family life and place of residence?

I am writing to advise you that your enquiry does not fall under the Freedom of Information regime.

It may be helpful if I explain that the Freedom of Information (Scotland) Act 2002 gives individuals and organisations the right to access all types of recorded information held, at the time the request is received, by public authorities such as the SCTS. This right applies to information held and does not create a right to obtain advice or analysis.

The information you have requested is considered to be within the remit of legal advice. I can advise that the staff working for the Scottish Courts and Tribunals Service (SCTS) are not legally qualified and therefore not able to provide the information requested.

You may wish to seek legal advice which can be obtained from the Citizens Advice Bureau. A link to their website has been provided below:

<https://www.citizensadvice.org.uk/>

I am sorry not to be of more assistance on this occasion.

Yours sincerely

Gillian Warner

Gillian Warner
FOI & Correspondence Manager
0131 444 3312.