

Chris Clark
Request-563280-d115fdb@whatdotheyknow.com
Our Ref: HQ 18335 Review

10 May 2019

Dear Mr Clark

FREEDOM OF INFORMATION REQUEST- REVIEW

Further to our letter of 17 April 2019, I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for:

RFI – Furnish a copy of Angus Sinclair's (DOB 7 June 1945 died 11 March 2019) Prison Record for the period 1961 to 1982 please.

I have concluded that a fresh decision should be substituted.

The original exemption under section s.38 (1) (b) of FOISA i.e. personal data relating to a third party was incorrectly applied. With hindsight the correct exemption should have been applied under Section 34(2) (a) of FOISA

Section 34 - Investigations by Scottish public authorities and proceedings arising out of such investigations.

(2)Information is exempt information if—

(a) held by a Scottish public authority for the purposes of an inquiry instituted under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016) but not for the time being concluded.

As the exemption is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. It should be noted that the test considers what is in the public interest not what is of interest to the public. We have found that, on balance, the public interest lies in favour of upholding the exemption. While we recognise that there is some public interest in release because of general interest in Mr Sinclair's case, this is outweighed by the public interest in ensuring a robust Fatal Accident inquiry (FAI) by protecting an individual's information whilst the matters are still being considered by the courts in connection with his sudden death.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. You can contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road

St Andrews
Fife
KY16 9DS
E-mail: enquiries@itspublicknowledge.info
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

I trust this information is helpful.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MD' followed by a horizontal flourish.

Maurice Dickie
Project Manager