

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA
Policy Division



Ms Catriona Dalrymple, Head of Policy

Angie Nickson

Request-189341-444f6a39@whatdotheyknow.com

Tel: 0131 226 2626
Text Relay prefix: 18001

Fax:

Your ref:
Our ref: R007095

14 April 2014

Dear Ms Nickson

Thank you for your e-mail dated 13 December in which you requested the following information:

"Under the FOIs Act please could you send me a copy of Crown Office Circular No.2025 on the 28th November 1991 and subsequent amended set of directions was issued, Crown Office Circular No 2025/1 on the 20th December 1991.

I believe both are referred to in the so called Magic Circle Affair Report which was I think about homosexuality, perversion of justice and a sex abuse web in the Scottish Establishment to which I provide a link here.

<https://docs.google.com/file/d/0B0NRqCqye5F9MTYwYmY4NDgtMjU5Yy00M2U1LTlmMmEtYThlNWFiZDliNDAY/edit?pli=1>

Please could you send me a copy of what the Magic Circle Affair Report calls the Orr Report"

You wrote again on 11 February seeking an internal review in terms of the Freedom of Information (Scotland) Act 2002 (FOISA) due to the fact that you had not received a response to your e-mail of 13 December. I am sorry for the delay in responding to you which resulted from the need to carry out further investigation into the matter you raised.

Firstly, I have made inquiry into your request for a review. I have found that we failed to properly process your e-mail of 13 December. We did not pick up on the fact that this differed in its terms from your earlier correspondence in which you had withdrawn a previous request for information and we did not appreciate that this was a fresh request for information. Staff have been reminded to be vigilant in this respect to avoid similar occurrences in the future. I apologise for this error and the inconvenience caused to you. To this extent, I uphold your request for review.

Turning to the information which you request, I can confirm that there is no trace of the Orr Report within Crown Office.

So far as your request for copies of the Crown Office circulars 2025 and 2025/1 issued on the instructions of the Right Honourable the Lord Fraser of Carmyllie are concerned, I would direct you to the Court of Session judgment, Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73 (issued on 30 September 2009) which clarified that the Freedom of Information (Scotland) Act 2002 (FOISA) gives a right to information, not documents. In terms of FOISA you are therefore entitled to request information held by COPFS, but not necessarily the documents in which that information is contained.

The substance of the circulars is already in the public domain and can be found at pages 14 and 15 of the Report which was prepared by W A Nimmo Smith QC and J D Friel, then Regional Procurator Fiscal of North Strathclyde. This was printed by HMSO on the order of the House of Commons of 26 January 1993 and referred to in your request. I enclose a copy of the relevant chapter for your information.

If you are dissatisfied with the outcome of this review under section 47(1) of FOISA you generally 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:

Kinburn Castle,
Doubledykes Road,
St Andrews,
Fife
KY16 9DS.

Email: enquiries@itspublicknowledge.info

Tel: 01334 484610

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.

However, under section 48(c) of FOISA no application may be made to the Commissioner as respects a request for review made to the Lord Advocate to the extent that the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland. I consider that the information you have requested falls into that category. While it is ultimately for the Commissioner to take a view, in my view it is unlikely that she will be able to validate an appeal and take a decision on this matter.

Yours sincerely

Cora McDivitt

MRS C MCDIVITT

