

S Gibb
[Via email]

Data Protection, FOI and
Correspondence Branch
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Our Ref: \FOI2014106

28 July 2014

Dear Ms Gibb

Freedom of Information (Scotland) Act 2002

I refer to your email dated 30 June following the letter you received on 26 June answering your request of 28 May under Freedom of Information (Scotland) Act 2002 (“FOISA”) in which you sought:

A copy of the “winding up” order in relation to Standard Life and details of the accountants (professionals) appointed as administrators.

The reply of 26 June highlighted that requests for information contained in court records would ordinarily be subject to an exemption under section 37 of FOISA. However, it went on to note that a search had “found no trace of any Liquidation cases against the Standard Life Assurance Company in the sheriff court or the Court of Session”.

Search of SCS records

I have conducted a review in terms of FOISA in relation to your request and the response of 28 May. In doing so, I sought clarification of the methodology employed in searching for the information requested. The Scottish Court Service’s Case Management System was interrogated, with searches run for the terms containing either “Standard” or “Life” within the case name. The search was not restricted by date and the use of a “wild card” symbol employed to pick variations for the names. The data was then filtered into sequestration and liquidation cases. This resulted in no results in which Standard Life were named as the defender.

It was highlighted to me that these searches would not deliver a result where a case did in fact involve Standard Life but neither part of its name appeared in the case name.

I am satisfied that the search terms employed were appropriate and the search results accurate.

Section 37: court records

If there are alternate search terms that you consider appropriate, we would of course be happy to consider further. However, as highlighted in the reply of 26 June, the section 37 (of FOISA) exemption for court records would be likely to apply to detailed results of case records. This is an absolute exemption and is not subject to the public interest test. Its application involves assessing the following factors:

- a) Is the information contained in a document lodged with, or otherwise placed in the custody of, a court for the purposes of proceedings, or with a person conducting an inquiry or arbitration for the purposes of that inquiry or arbitration?
- b) Is the information contained in a document served on, or by, a Scottish public authority for the purposes of court proceedings?
- c) Is the information contained in a document created by a court or a member of its staff for the purposes of, or in the course of proceedings in a case, or created by a person conducting an inquiry or arbitration for the purposes of that inquiry or arbitration?
- d) Is the information held by the public authority solely because it is contained in one of the document types set out in a) – c) above?

[see further <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section37/Section37.aspx>]

For the avoidance of any doubt, section 37 of FOISA has not been applied in this case because no information was found from a search of our case database. It also seems certain that conducting a manual search of all Scottish civil case records for any action involving Standard Life would exceed the case handling cost limit of £600 under the freedom of information regime.

Data Protection

I note that your letter makes reference to schedule 7 of Data Protection Act 1998 and to the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. I confirm that SCS' response to your request has been considered in terms of FOISA and not under either of those instruments. Information on making a Subject Access Request under the Data Protection Act is available at:

<http://www.scotcourts.gov.uk/about-the-scottish-court-service/contact-us/freedom-of-information>

Other information sources

I appreciate that you may have already considered and exhausted this option, but in case it is of any assistance I attach a link to "The Gazette" website, which brings together the London, Edinburgh and Belfast Gazettes and permits searching of corporate insolvency and personal bankruptcy notices:

<https://www.thegazette.co.uk/>

Information Commissioner

I am sorry not to be of greater assistance. If you remain 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

Iain Hockenhull

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Scottish Court Service

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