



Scottish Information
Commissioner

**Decision 229/2007 Mr Arunabha Das Gupta and the
Scottish Court Service**

*Four requests for information regarding individuals and practices at
the Scottish Court Service*

Applicant: Mr Arunabha Das Gupta

Authority: Scottish Court Service

Case No: 200601789

Decision Date: 17 December 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 229/2007 Mr Arunabha Das Gupta and the Scottish Court Service

Four requests for information regarding individuals and practices at the Scottish Court Service – Commissioner required disclosure of the dates of appointment of two officials, but accepted that the remaining information withheld was exempt under section 38(1)(b) and that other information was not held under section 17 – Commissioner found that certain questions had not been responded to at the time of the requests, but no further action required.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 14(1) (Vexatious or repeated requests); 17(1) (Notice that information is not held); 21(1), (4) and (5) (Review by Scottish public authority); 38(1)(b) and 38(2) (Personal information) and 73 (Interpretation) (definition of “information”)

Data Protection Act 1998 (the DPA): sections 1(1) (Basic interpretative provisions) (definition of “personal data”) and 2(a) and (e) (Sensitive personal data); Schedule 1, Part 1, paragraph 1 (The first data protection principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of personal data) (condition 6(1))

The full text of each of these provisions is reproduced in Appendix 1 to this decision. Both appendices (Appendix 2 is referred to below) form part of this decision.

Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code), paragraphs 65 and 66.

Facts

Mr Gupta made four separate information requests to the Scottish Court Service (the SCS). The SCS responded to these four requests, releasing some information. Following a review, Mr Gupta applied to the Commissioner for a decision.

The Commissioner found that the SCS had generally dealt with Mr Gupta's requests in accordance with Part 1 of FOISA, but ordered the SCS to release the dates of appointment of the two officials in request 1 as set out in Appendix 2.



Background

1. Mr Gupta made a single application to this Office regarding four separate, but related, requests to the SCS. Each request consisted of a very complex series of questions. This decision will consider the SCS's responses to each of these four requests. Appendix 2 details the questions that comprise each of Mr Gupta's requests, with some modification to remove, e.g., the names of individuals and details of the specific events to which the requests relate.

Request 1

2. Mr Gupta faxed the SCS requesting information regarding two of its employees and its procedures. The fax was dated 19 January 2006, but was received by the SCS on 27 January 2006.
3. The SCS wrote to Mr Gupta in response to this request on 24 February 2006, providing some of the information sought. However, it notified Mr Gupta in terms of section 17 of FOISA that some requested information was not held, and certain other information was being withheld under the terms of exemptions contained in sections 37 and 38 of FOISA.
4. On 30 March 2006, Mr Gupta faxed the SCS requesting a review of its decision.

Request 2

5. Mr Gupta faxed the SCS on 24 January 2006 requesting information regarding two court cases he had been involved with.
6. The SCS replied on 9 February 2006. It did not cite any exemptions under FOISA to withhold any requested information. However, for certain requests concerning the Auditor of Court, the SCS indicated that Mr Gupta should direct his requests to the Auditor or the Justice Department of the Scottish Government.
7. On 5 April 2006, Mr Gupta again faxed the SCS requesting a review of this decision.

Request 3

8. Mr Gupta faxed his third request to the SCS on 5 February 2006. This requested information regarding an individual employed by the SCS and letters from the SCS.



9. On 3 March 2006, the SCS wrote to Mr Gupta in response to his request for information. It provided information in response to some of the questions and also notified him that other information requested was not held in terms of section 17 of FOISA.
10. Mr Gupta subsequently faxed the SCS on 5 May 2006 requesting a review of this decision.

Request 4

11. On 6 March 2006, Mr Gupta faxed the SCS requesting information regarding an individual employed by the SCS.
12. The SCS responded to this request on 17 March 2006. It provided information in response to some of the questions, but withheld other information under section 38 of FOISA.
13. On 18 April 2006, Mr Gupta faxed the SCS requesting a review of its decision.
14. On 10 May 2006, the SCS notified Mr Gupta of the outcome of its reviews of all four of his information requests. In each case, it upheld its initial response in full.
15. Mr Gupta faxed my Office on 9 November 2006, stating that he was dissatisfied with the outcome of the SCS's review and applying to me for a decision in terms of section 47(1) of FOISA. Mr Gupta expressed dissatisfaction with the responses to his requests, and the conduct of the review by the SCS.
16. The application was validated by establishing that Mr Gupta had made requests for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its responses to those requests.

The Investigation

17. The SCS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 5 March 2007 that an application had been received from Mr Gupta. The Ministers were asked to provide my Office with specified items of information required for the purposes of the investigation and to comment on the application in terms of section 49(3)(a) of FOISA.



18. The Ministers responded on 27 April 2007 with the information and comments requested and the case was then allocated to an investigating officer.
19. The investigating officer subsequently corresponded with Mr Gupta to obtain a verified typed version of his four requests for information. Mr Gupta's requests to the SCS were hand-written and detailed and it was difficult to clearly read each question. The investigating officer also confirmed with Mr Gupta that he considered all his questions to be valid requests for information under section 1(1) of FOISA.
20. The investigating officer provided the Ministers with an electronic copy of Mr Gupta's requests and asked for comments as to:
 - a) whether the SCS considered each of Mr Gupta's questions to be valid requests for information,
 - b) which of these had been answered,
 - c) whether more information could be released to Mr Gupta, and
 - d) for information which had been withheld from Mr Gupta, which exemption in FOISA the SCS was relying upon to justify its decision.
21. The Ministers provided a detailed response to this request. Details of the exemptions that were applied to specific information requests are contained in the table in Appendix 2.
22. At this stage, the Ministers also confirmed that the SCS had passed part of request 1 to be handled by its external solicitors. The investigating officer was provided with a copy of a draft letter (dated 6 March 2006) prepared in response to this request, but the Ministers could not provide a finalised version or otherwise demonstrate that it had been sent. Mr Gupta was also unable to provide a copy of a letter bearing the date 6 March 2006.
23. After further exchanges with my Office, the Ministers confirmed that they would release additional information in response to some of Mr Gupta's questions which had not been answered when the SCS responded to Mr Gupta's original requests. The Ministers also confirmed that they would provide Mr Gupta with a copy of the 6 March 2006 letter prepared by the SCS's solicitors as they had not been able to establish that this had ever been finalised and sent.
24. The SCS released additional information to Mr Gupta on 26 October 2007. I have noted these additional responses in Appendix 2. I have marked information that was provided in the course of my investigation with "*" alongside my entry in the "provided" column in the table.



The Commissioner's Analysis and Findings

25. In coming to a decision on this matter, I have considered all the information and submissions that have been presented to me by both Mr Gupta and the Ministers and I am satisfied that no matter of relevance has been overlooked.
26. It may be helpful before considering the case in detail to note the limitations of what I will consider below. As will be clear from the table in Appendix 2, Mr Gupta's requests under FOISA are complex, and in some cases it is not clear what recorded information might be held by the SCS that would allow a response to be provided under the terms of FOISA.
27. In what follows, I will first address the question of the extent to which these requests can be considered requests for recorded information and, so, valid requests under the terms of FOISA. I will then address the question of whether the SCS has acted in accordance with Part 1 of FOISA in its responses to those requests that I have judged to be valid.
28. I would note, however, that Mr Gupta's requests and subsequent application to my Office form part of an ongoing series of correspondence between himself and the SCS in relation to complaints about his treatment by the SCS staff in various court cases to which he was a party. Within his correspondence with my Office and the SCS, Mr Gupta has raised matters that go beyond my remit to consider, such as the accuracy of the information held, and the conduct of officers in matters other than the handling of his information requests.
29. I must be clear at the outset that I can only consider the matters raised by Mr Gupta that relate to whether or not the SCS complied with the requirements of Part 1 of FOISA in responding to requests for recorded information. FOISA does not prescribe what information should be held in recorded form by a public authority, and I can only consider the information that is actually held.
30. In his requests for review, Mr Gupta's also asked the SCS a number of new questions that had been prompted by the responses to his initial requests.
31. Under FOISA, I can only investigate the handing of information requests where the applicant has asked the authority to undertake a review of its response to the initial request before making an application to me. Since Mr Gupta only raised these new requests in his requests for review and did not subsequently asked that the responses to these questions be reviewed, I am unable to consider these new questions with this decision. I will only consider those information requests which I consider to be valid as specified in Appendix 2 of this decision.



To what extent did Mr Gupta's make valid information requests?

32. Section 1(1) of FOISA states that a person who requests information from an authority which holds it is entitled to be given it by the authority. This right is then limited by various provisions contained elsewhere in Part 1 and 2 of FOISA. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not usually require a public authority to create recorded information in order to respond to a request, or to provide information that is not held in a recorded form (e.g. about a person's intentions or opinions).
33. Mr Gupta's four "requests" described above actually comprised more than 120 separate parts or questions, some of which also contain multiple parts and cross refer to one another. As noted above, in some cases I do not accept that they can reasonably be construed as seeking access to *recorded* information.
34. I have considered carefully each part of the requests made by Mr Gupta to determine whether it can be considered a valid request for recorded information. Having done so, I have concluded that only around half of these are valid requests for information for the purposes of section 1(1) of FOISA. I have indicated my conclusion for each item in the list of Mr Gupta's questions included in Appendix 2. Those questions that I have concluded cannot reasonably be construed as seeking recorded information have not been considered further in this decision.
35. The questions I have concluded are not valid information requests for the purposes of FOISA include requests for explanations of individual's actions, confirmation of their awareness of certain procedures or documents and thinking process. I have also concluded that a number of closed questions requiring a 'yes' or 'no' answer, should not be considered requests for recorded information in the particular circumstances of this case.

Which questions have been answered, unanswered or information withheld?

36. I have studied the SCS's responses to Mr Gupta's questions and the responses which have been supplied by the SCS. I have marked "Y" in the column headed "provided" alongside each valid request where I am satisfied that the information requested by Mr Gupta has been provided to him. "**Y" indicates that some or all of the information was provided in the course of the investigation.
37. In some cases, the information was provided via reference to relevant procedures or manuals and so on. I am satisfied that, given the extent and terms of these requests, that the responses given to those requests I have marked "Y" were reasonable in the particular circumstances of this case.



38. Where I have not marked Y in the “provided” column in relation to a request which I consider to be a valid information request, some or all of the information sought has not been provided. For a number of these requests, the Ministers have submitted that the information is exempt information under the terms of section 38(1)(b) of FOISA, or that it is not held in terms of section 17 of FOISA. I will consider the SCS’s application of these two provisions in turn below. Before doing so, I will consider two sets of questions where it appears that no response was provided by the SCS.

Questions where the SCS failed to provide a response

Request 1 – requests passed to the SCS’s solicitors

39. In handling this request, the SCS passed a number of questions on to its external solicitors to prepare a response.
40. I see no reason why a public authority cannot ask its solicitors to respond to an information request on its behalf, and consider that the response so issued is made as if it had been made directly by the public authority (provided of course that the response makes it clear that the solicitors are responding on behalf of their clients).
41. Therefore, although Mr Gupta has expressed dissatisfaction with the SCS’s decision to handle his request in this manner, there is nothing in principle or in FOISA to prevent an authority from passing a request to the part of the organisation that can most appropriately handle the request, or those acting on its behalf.
42. In this case, it appears that when the request was passed by the SCS to its solicitors, a response was drafted. However, the Ministers have not been able to locate a final version of this letter or to confirm that this response was issued. Mr Gupta has not been able to supply a copy to me.
43. I have therefore concluded, on balance of probabilities, that the SCS breached the requirements of Part 1 of FOISA in the handling of those requests passed to the solicitors. The SCS failed to (either directly or through the solicitors acting as its agents) provide the information requested in line with the requirements of section 1(1), or to explain why it should be withheld by virtue of any of the provisions of Part 2, or to explain that it was not to be provided in line with any other provision contained in Part 1 of FOISA (for example because it was not held in terms of section 17(1)).
44. However, as noted above, the letter which was drafted was sent to Mr Gupta during the investigation, and so I do not require any steps to be taken in relation to this failure.



Request 2 – requests directed to the Justice Department or Auditor of the court

45. For a number of the requests contained in request 2, the SCS responded that “the remaining questions should be directed to the Justice Department [of the Scottish Government] or the Auditor of Court. These are not matters for the SCS of which the Auditor is not a member”.
46. In the Ministers’ submissions to my Office, they indicated that this response was intended to state that the information sought was not held for the purposes of section 17 of FOISA.
47. However, I am satisfied that no response in these terms was provided to Mr Gupta at the time of his request.
48. Furthermore, I would note that both the SCS and the Justice Department of the Scottish Government fall within the scope of the “Scottish Ministers” for the purposes of compliance with FOISA. Although a number of apparently separate departments and agencies make up the Scottish Administration, these are a single legal entity in terms of paragraph 1 of Schedule 1 to FOISA. Therefore, if information was held by the Justice Department that would fulfil Mr Gupta’s request to the SCS, then a response should have been provided that took such information into consideration.
49. As the SCS and the Justice Department form part of the same legal entity responsible for compliance with FOISA, I must conclude that the SCS acted inappropriately in simply telling Mr Gupta to make his response to another arm of that wider organisation.
50. In the light of the above, I have concluded that the SCS failed to comply with the requirements of Part 1 of FOISA in its responses to Mr Gupta’s request 2, as marked in the table at Appendix 2. For these requests, the SCS failed to either provide the information requested in line with the requirements of section 1(1), or to explain why it should be withheld by virtue of any of the provisions of Part 2, or to explain that it was not to be provided in line with any other provision contained in Part 1 of FOISA (for example because it was not held in terms of section 17(1)).
51. However, I note that in subsequent correspondence concerning other requests, the SCS has provided Mr Gupta with some of the information sought in these requests. In the circumstances, and since Mr Gupta now has much of the information as a result of other enquiries, I will not require the SCS to take any action in response to this failure.



Withheld Information – section 38(1)(b)

52. The SCS withheld information as follows:
- Request 1
Section 38(1)(b) of FOISA relied on to withhold information in response to questions 1 (complete date), 2 (complete date), 3 (complete date), 4, 10, 13b, 13c, 19 (the repetition of 1, 2, 3, 4, 10, 13b, 13c for a second individual), 24 and 25.
 - Request 2
Section 38(1)(b) of FOISA relied on to withhold information in response to request w.
 - Request 4
Section 38(1)(b) of FOISA relied on to withhold complete dates requested in 2 and 5.
53. Section 38(1)(b) of FOISA exempts personal data from release, the disclosure of which to a member of the public otherwise than under FOISA would contravene any of the data protection principles contained in the Data Protection Act 1998 (the DPA).
54. The DPA defines personal data in section 1(1) as data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.
55. It should be noted that the exemption in section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (b), is an absolute exemption in that it is not subject to the public interest test required by section 2(1)(b) of FOISA.
56. The Ministers submitted that the information requested (and detailed above) was exempt under section 38(1)(b) of FOISA on the basis that the information was personal data and that disclosure of the data would contravene the first data protection principle.

Is the information under consideration personal data?

57. Mr Gupta requested a variety of information relating to named individuals within the SCS. This information falls into the following categories:
- a. Ethnic origin (request 1 - questions 4 and 19(4), request 2, question w.)



- b. Full dates of joining SCS and further appointments (request 1 - questions 1, 2, 3, request 4 – questions 2 and 5)
 - c. Annual salary (request 1 - questions 10 and 19(10))
 - d. Paid holidays and sick leave (request 1 - questions 13b, 13c and 19 (13b, 13c))
 - e. Career details (I have interpreted this as a request for the individual's curriculum vitae, or details held concerning the individual's previous positions) (request 1 – question 24)
 - f. Whether an individual holds a British or American degree (request 1 - question 25)
58. In this instance, I am satisfied that the information in each of these categories relates to living individuals who are identifiable from that information or from that information and other information in the possession of the data controller. I am therefore satisfied that the information withheld under the terms of section 38(1)(b) of FOISA constitutes the personal data of those individuals as defined by the DPA.
59. I have also considered the definition of "sensitive personal data" in section 2 of the DPA and consider that the information requested regarding ethnic origin of individuals and regarding sick leave (but none of the other information withheld) falls within this definition.

Would release of the information breach the first data protection principle?

60. As noted above, the Ministers submitted that disclosure of the withheld information would breach the first data protection principle. This states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 (of the DPA) is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 (again, of the DPA) is also met.
61. In their submissions to me, the Ministers advised that the individuals concerned had no expectation that information regarding themselves would be made publicly available and that the release of such information could cause or be likely to cause substantial and unwarranted damage or distress to the individuals.

Sensitive personal data - Ethnic Origin/Sick Leave

62. I have considered whether any of the conditions in Schedule 3 of the DPA can be met in this case, and I am satisfied that they cannot. For this reason, I am satisfied that disclosure of the information requested by Mr Gupta concerning the ethnic origin of certain individuals and the physical or mental health or condition of those individuals would breach the first data protection principle. I am therefore satisfied that the exemption in section 38(1)(b) was correctly applied to this information.



Non-sensitive personal data

63. With the remaining personal information under consideration, I have first considered whether disclosure would be fair. In considering this test, it is appropriate to consider the expectations of the data subjects, and how closely the information concerned relates to their private lives.
64. In this case, I have noted that the categories of information at b-f in paragraph 57, although held in relation to the individuals' work, also relate closely to a person's life outside work – their educational history and choices, career progression over considerable periods of time, absence due to illness and private leave and their precise salary. I also note that such information does not directly relate to the conduct of the individuals' duties on behalf of the SCS.
65. For the most part, I have concluded that disclosure of the information withheld in this case would be unfair, and so would breach the first data protection principle. In my view, disclosure would involve an intrusion into the private lives of these individuals that would be both unwarranted and unexpected. I have noted that, in responding to Mr Gupta's requests, the SCS has provided a large amount of information about its staff and their work. For example, Mr Gupta has been provided with salary information for the individuals concerned presented in terms of broad salary bands, albeit not precise figures.
66. While I have accepted the application of the exemption in section 38(1)(b) to most of the information withheld by the SCS, I have not upheld the application of this exemption to the dates of appointment to their current role for Person A, as sought in question 3 of request 1, or for Person B as sought in question 19.
67. I have noted that Person A and Person B are both members of the SCS Management Board, whose status as such is detailed in the SCS's annual report. I also note that the SCS's annual reports record the date at which an individual first took their post on the Management Board, in the report for that year. In these circumstances, I believe that these individuals would have different expectations about this information being disclosed than they would for less senior appointments during their careers, and than more junior officials would expect.



68. In these circumstances, I am satisfied that condition 6 of schedule 2 of the DPA could be met for the date of appointment for Person A and Person B to their present positions. Condition 6 covers processing (for example, through disclosure to the public) which is necessary for the purposes of legitimate interests pursued by the third party to whom information is disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
69. The application of condition 6 involves a balance between competing interests. Paragraph 6 requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed, which in this context are members of the public (section 38(2)(a) of FOISA) and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects which in this case are Person A and Person B. However, because the processing must be “necessary” for the legitimate interests of the members of the public to apply, only where (i) outweighs or is greater than (ii) should be personal data be disclosed.
70. I accept that Mr Gupta (like the public in general) has a legitimate interest in gaining access to information regarding individuals employed in senior positions by the SCS. Indeed, the SCS already discloses the dates of appointment of members of its management team, apparently in pursuit of such a legitimate interest.
71. I am also satisfied, given that information about the dates of appointment of members of the Management Board of the SCS is made routinely available, that disclosure of the information is not unwarranted and that the rights, freedoms and legitimate interests of Person A and Person B do not outweigh the legitimate interests of the public and Mr Gupta in disclosure of this information.
72. For the same reasons, I consider that disclosure of the information would not be unfair.
73. No separate arguments have been submitted to me as to why disclosure of this information would be unlawful.
74. I therefore do not accept that the dates of appointment of these two individuals to their current positions would breach the first data protection principle, and so I do not accept that this information is exempt under section 38(1)(b). I therefore find that the SCS breached Part 1 (and, in particular, section 1(1)) of FOISA by failing to provide this information to Mr Gupta, and I now require it to provide the full dates of appointment to Mr Gupta.

Information not held - Questions 13a and 19(13a) of Request 1



75. In its email of 26 October 2007, the Ministers confirmed that the SCS did not hold any information regarding the number of days that two individuals (Person A and Person B) were away from the office as part of their job.
76. The two individuals were employed in a senior capacity within the SCS, and I am satisfied, on the basis of the submissions provided to me by the SCS, that given the nature of their roles, records relating to their work would not exist in a form that would allow a response to this request to be gathered.

Technical matters – conduct of review

77. In his application for decision by me, Mr Gupta expressed considerable dissatisfaction with the conduct of the SCS's review of his four requests. In particular, he took the view that the review had simply "rubber stamped" the responses to his initial requests.
78. I have some sympathy with Mr Gupta's concerns in this case. The letter stating the outcome of the review of a number of very complex requests was both brief and did not offer any reasoning for the full acceptance for the approach taken in the case. It did not address any of the specific points raised in relation to the various requests.
79. In their comments to my Office, the Ministers have acknowledged that the response issued by the SCS following Mr Gupta's requests for review was not as full as it should have been, and they apologised for this. However, they noted that staff at the SCS had attempted to respond to the large number of questions submitted by Mr Gupta, despite the nature of his correspondence.
80. The key elements of a review under FOISA are:
 - a. The review must be carried out and the applicant notified of the outcome within 20 working days of receipt of request for review.
 - b. Although FOISA itself is not prescriptive, the Section 60 Code states that procedures should be appropriate and accessible, fair and impartial and should allow for different decisions to be taken if appropriate (paragraph 65). It should generally be carried out by staff not involved in the original decision (paragraph 66).
81. I am satisfied that the SCS complied with the timescale for review, and that the reviews were conducted by an officer different from the one who first dealt with the request in each case.



82. However, I do have concerns about the adequacy of the process followed in this case, and particularly whether a thorough consideration of the initial responses and Mr Gupta's concerns was made. I note, for example, that the request for review in relation to request 4 was received by the SCS on 5 May 2006, and the response issued just three working days later.
83. That said, I have, despite some concerns relating to the adequacy of the process and the response provided, concluded that the SCS complied with the requirements of section 21 of FOISA (and particularly sections 21(1), (4) and (5)) in this case.

Further comments

84. I have noted in this case that the SCS has made considerable efforts to provide information in response to requests which were complex, voluminous and difficult to understand. Mr Gupta's requests contained a mixture of commentary and complaints, requests for recorded information and requests for comment or information that could not reasonably be expected to be held in a recorded form. In these circumstances, the manner and tone of Mr Gupta's communications made it difficult for the SCS to provide him with a full response to his request for information.
85. I agree with the Ministers that Mr Gupta's requests imposed a significant burden upon the SCS. The SCS indicated in correspondence with my Office that it had come to consider Mr Gupta's requests for information as vexatious for the purposes of section 14(1) of FOISA (which does not oblige an authority to comply with a request which is vexatious).
86. I will not make any judgement as to whether Mr Gupta's requests should have been considered to be vexatious in this case, as this matter was not raised when the SCS was handling the initial requests or requests for review.
87. However, I would note that I have indicated in previous decisions that the cumulative impact of an individual's information requests might on occasion justify a decision to treat further requests from the same requestor as vexatious for the purposes of FOISA. I would advise Mr Gupta to be mindful of the effect of his requests on the public authority receiving them, should he make further requests for information under the terms of FOISA. I would also suggest that he formulates any requests to seek only recorded information, and present them in a concise and legible manner.



Decision

I find that the Scottish Court Service (SCS) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the four information requests made by Mr Arunabha Das Gupta as set out in Appendix 2 of this decision.

Request 1

With respect to request 1, I have found that the SCS misapplied the exemption in section 38(1)(b) (read in conjunction with section 38(2)(a)(i) or (b)) to the (specific) dates of appointment to their current positions for Person A (question 3) and Person B (request 19, repeating 3). In so doing, it breached the requirements of Part 1 and section 1(1).

I now require this information to be supplied to Mr Gupta within 45 days of the date of intimation of this decision.

I have also found that the SCS breached the requirements of Part 1 of FOISA by failing to provide certain information requested in line with the requirements of section 1(1), or to explain why it should be withheld by virtue of any of the provisions of Part 2, or to explain that it was not to be provided in line with any other provision contained in Part 1 of FOISA (for example because it was not held in terms of section 17(1)).

For the reasons set out in the decision, I do not require any steps to be taken in response to this breach.

Request 2

I have again found that the SCS breached the requirements of Part 1 of FOISA by failing to provide certain information requested in line with the requirements of section 1(1), or to explain why it should be withheld by virtue of any of the provisions of Part 2, or to explain that it was not to be provided in line with any other provision contained in Part 1 of FOISA (for example because it was not held in terms of section 17(1)).



Again, for the reasons set out in the decision, I do not require a response now to be provided.

Requests 3 and 4

I have concluded that the SCS complied in full with the requirements of Part 1 of FOISA when responding to Mr Gupta's requests 3 and 4.

Appeal

Should either Mr Gupta or the SCS wish to appeal against this decision, there is 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 this decision notice.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
17 December 2007



Appendix 1

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

[...]



- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modification as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision has been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

38 Personal information

- (1) Information is exempt information if it constitutes-
 - [...]
 - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- (2) The first condition is-
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles; or
 - (ii) [...]
 - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

73 Interpretation

In this Act, unless the context requires a different interpretation-
[...]
"information" (subject to sections 50(9) and 64(2)) means information recorded in any form;
[...]



DATA PROTECTION ACT 1998

1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires –

[...]

“personal data” means data which relate to a living individual who can be identified-

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual

2 Sensitive personal data

In this Act “sensitive personal data” means personal data consisting of information as to—

- (a) the racial or ethnic origin of the data subject,
[...]
- (e) his physical or mental health or condition,
[...]

SCHEDULE 1 THE DATA PROTECTION PRINCIPLES PART I THE PRINCIPLES

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
- (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

SCHEDULE 2 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject..



Appendix 2

Request 1 dated 27 January 2006

No:	Question	Valid request ? (Y/N)	Provided? (Y/N)	Section	Comments
	[Person A]				
1.	The date he joined SCS.	Y	*Year provided, full date withheld	38(1)(b)	Upheld – withhold information
2.	The date he was appointed the Keeper of the Rolls of the Court of Session.	Y	*Month and year provided, full date withheld	38(1)(b)	Upheld – withhold information
3.	The date he was appointed to his present position.	Y	*Month and year provided, full date withheld	38(1)(b)	Not exempt – provide full date
4.	What is ethnic origin?	Y	N	38(1)(b)	Upheld – withhold information
5.	What precisely is his function as Director of [named area]?	Y	Y		
6.	What rules and regulations does he follow in carrying out his duties?	Y	Y		
7.	Is it correct that until the appointment of [name] as his deputy in 2003 he had no support staff except his secretary [...]?	Y	Y		



8.	What records does he keep in carrying out his functions, and <u>in particular</u> , what records does he keep in carrying out an investigation into complaints against Sherriff Court staff in his area?	Y	Y		
9.	What precisely is his civil service grading?	Y	Y		
10.	What is his annual salary?	Y	N	38(1)(b)	Upheld – withhold information
11.	What other payments are made to him? (E.g. employer's contribution to pension; travelling/petrol allowance; allowance for hospitality (entertaining clients in restaurants of clubs; providing tickets for theatres, operas etc to clients etc etc).	Y	*Y (some information provided in initial response, additional information during investigation)		
12.	How many <u>paid</u> holidays he is entitled to in a year?	Y	Y		
13.	How many days in 2005 he was away from his office:- a) As part of his job; b) On paid holidays and c) On paid sick leave (if any)?	Y	N	a) 17 b)38(1)(b) c)38(1)(b)	Upheld – withhold information
14.	How many days in 2005 he was away from his office to attend SCS management monthly board meetings?	Y	*Y		
15.	To whom is he responsible? [...]	Y	Y		
16.	What precisely are the civil service disciplinary rules and regulations (full details of statutory instrument numbers, where necessary) to which he is subject for alleged <u>misconduct</u> (e.g. dishonesty, dereliction of official duty, corrupt conduct, conduct to be seen by	Y	Y		



	reasonable members of the public as conduct bringing her majesty's home civil service into disrepute etc etc).				
17.	Number of complaints, in 2005, against the staff of the sheriff courts in his area.	Y	Y		
18.	Number of complaints, in 2005, against his handling of the said complaints.	Y	Y		
	Person B				
19.	Same questions as those for Person A - 1, 2, 3, 4, 6, 8 (excluding the words "in his area"), 9, 10, 11, 12, 13, 14, 15, 16, 17 (excluding the same words as at 8 above) and 18	See above	As above	See above	As above
20.	Confirmation that like Person A, he too is a Director of the SCS.	Y	Y		
21.	If <u>he is a director of the SCS</u> , why does he not <u>disclose</u> that fact (or, indeed, that he his the head of the <u>[named]</u> Unit) in his correspondence to complainers?	N	N/A		
22.	<u>Who</u> appointed him to his present position (full name and job title please)?	Y	Y		
23.	Was his position advertised in the press?	Y	Y		
24.	What are his career details?	Y	N	38(1)(b)	Upheld – withhold information
25.	Does he hold a degree from a British or American university?	Y	N	38(1)(b)	Upheld – withhold information
26.	How many people work under him in the <u>[named]</u> Unit?	Y	Y		
	SCS Procedures [the following requests were made with reference to quotes from a letter concerning certain procedures to be followed by SCS staff]				
27.	Since the word 'reminder' suggests that Person B had <u>previously</u>	Y	*Y		Response



	<u>issued the said procedural directions, on what date were the said directions issued?</u>				provided by SCS's solicitors. Breach of Part 1 by initial failure to provide. No action required
28.	Does the word "staff" mean staff of the sheriff clerk's office in <u>each</u> sheriff court of Scotland?	Y	*Y		As above.
29.	Did the said "direction" document take the traditional <u>format as follows</u> , and on <u>Scottish Court Service notepaper</u> ? From: To: Subject: And signed by Person B?	Y	*Y		As above.
30.	If the answer to question [] above is in the <u>negative</u> , what form did the said document <u>take</u> ?	Y	*Y		As above.
31.	Despite my <u>repeated</u> requests in writing, why didn't Person B send me a copy of his <u>headed original directions</u> and remained <u>vague and evasive</u> about his <u>proposed reminder</u> to the said original directions?	N	N/A		
32.	Why was the need for a reminder?	N	N/A		
33.	Has the said <u>reminder</u> been issued since he wrote that letter of 23 September 2005?	Y	*Y		As above.
34.	If the answer is in the affirmative, <u>on which date was it issued?</u>	Y	*Y		As above.
	Why did the following members of sheriff court staff <u>did not follow the said procedural directions of Person B:-</u>				



35.	[name a] (Edinburgh Sheriff Court) – [case specified a] – date specified	N	N/A		
36.	[name b] (Edinburgh Sheriff Court) – [case specified b] – date specified	N	N/A		
37.	[name c] (Linlithgow Sheriff Court) – [case specified c] – date specified	N	N/A		
38.	[name d] – [case specified d] – date specified	N	N/A		
39.	Anonymous No. 1 – [case specified e] – date specified	N	N/A		
40.	Anonymous No. 2 – Ditto – date specified	N	N/A		
41.	[name e] – [case specified e] – date specified	N	N/A		
	SCS Procedures - What procedures were the Clerks following in:				
42.	[Case specified]	Y	Y		
43.	[Case specified]	Y	Y		



Request 2 dated 24 January 2006

No:	Question	Valid Request ? (Y/N)	Provided? (Y/N)	Section	Comments
I	Re: [specified case]				
a.	The date on which my note of appeal against sheriff principal [name] Interlocutor? of 11 th December 2005 arrived at the Court of Session registry?	Y	Y		
b.	The reason why <u>DPCS</u> , as required by the rules of court, has not acknowledged receipt of the said note of appeal?	N	N/A		
c.	The reason for the DPCS invoking ROC40.12(4) and making reference/referral to a Lord Ordinary? (if a ROC40.12(4) reference has been made)	N	N/A		
d.	What is the name of the said Lord Ordinary?	Y	Y		
e.	Is the said Lord Ordinary aware of the requirements of Article 6 (1) of the European Convention on Human Rights? Hearing in open court?	N	N/A		
f.	Is the <u>Lord Ordinary</u> aware that the European Court of Human Rights in Strasbourg is presently considering if [named judges], on 26 th January 2005, violated my human rights in terms of article 6(1) of the ECHR (SUPRA) in the instant action?	N	N/A		
g.	<i>Is the <u>Lord Ordinary</u> aware that in drafting the said [name] - Interlocutor? of 14th December 2005, Scottish Court Service employee [name] left out the material information that on the 14th December 2005, [name], the sheriff principal's personal secretary, placed before the sheriff principal documents (transmitted to her by fax on 13th December 2005 by myself) which showed why I did not attend the said appeal hearing of 14th December 2005?</i>	N	N/A		



II	Re: [specified case]				
a.	On what ground did the DPCS ([name], the present acting principal clerk of session) ask registry clerk [name] to write to me on 3 rd April 2003 to direct me to lodge a motion for extension of time for lodgement of the said appeal in terms of ROC.40.5(2) when my said note of appeal did not comply with the requirements of ROC.40.5(1) and ROC.40.5(2) could not be relied upon without first satisfying the said requirements of ROC.40.5.(1)?	Y	Y		
b.	Since the [specified] decision was binding on DPCS [name], why didn't he refer the said appeal to a Lord Ordinary in terms of ROC.40.12(4)?	N	N/A		
c.	Before listing my said motion, in terms of ROC.40.5(2), for hearing by named judges), did [name], the then DPCS, draw the attention to the said judges that: <ul style="list-style-type: none"> • The provisions of ROC.40.5(2) did not apply to the said appeal? • He ([name]) acted Ultra Vires his power of office by directing his clerk [name] (SUPRA) to write to me on 3rd April 2003 and ask me to lodge a ROC40.5(2) motion • The said clerk, [name] was in breach of her contract of employment by blindly following the said [name]'s instruction? 	N	N/A		
d.	If he [name] did not draw the attention of the said learned judges, as at (c) above, before listing my said motion for hearing, did he draw the attention of the said 3 judges (or any one of them) after the said listing?	N	N/A		
e.	Which rules of drafting interlocutor were being followed by [name] in drafting the interlocutor of 23 rd April 2003?	Y	Y		
f.	The Scottish Court Service claims that its staff in the sheriff courts follows an instruction manual termed 'The Technical Handbook'. Was	Y	Y		



	[name] following a similar instruction manual?				
g.	In [name]'s drafting of the said interlocutor of 23 rd April 2003 (see above) there is no mention of: <ul style="list-style-type: none"> • My motion in terms of the said ROC.40.5(2) • Refusal of the said motion by the court of 3 judges (SUPRA) and • The name of the Counsel ([name]) Why? 	N	N/A		
h.	Despite verbal requests to (named judge) in Court on 23/4/2003 and written requests to the DPCS ([name]), no opinion was issued by the court in respect of the judgement pronounced at the said hearing Why?	N	N/A		
i.	Why, did [name] (or his clerk [name]) dispatch the process back to Edinburgh Sheriff Court before the time period (one month) for lodging an application for leave to appeal against the said interlocutor of 23/03/03 had not expired? Was [name] or [name] (SUPRA) following any rule of court or 'instruction manual'?	N	N/A		
		Y	Y		
j.	What rule was [name] (SUPRA) following in listing my motion for leave to appeal against the said interlocutor of 23 rd April 2003 when the sheriff court process was lying in the sheriff principal's ([name]) chambers?	Y	Y		
k.	If the said rule (if any) did not require the sheriff court process to be in the Court of Session for the purposes of listing my said motion, why was it necessary for [name] to ask the sheriff principal's clerk to return the process to the Court of Session registry for the said hearing?	N	N/A		
l.	Why no opinion was issued by the court headed by named judge) in respect of its decision, of 15 th October 2003 to refuse my motion for leave to appeal against the said interlocutor of 23 rd April 2003, even though request for the said opinion was made in court and later in	N	N/A		



	writing to the DPCS (Name?)				
m.	What record was kept by the clerk of the court on 15 th October 2003 of the court's reasons (orally delivered by (named judge)) for not issuing the said opinion?	Y	Y		
n.	What rules (if any) the said clerk was following in drafting a record of proceedings in respect of the said hearing of 15 th October 2003?	Y	Y		
o.	If there was no rule for him to follow was he following instructions in an instruction manual?	Y	Y		
p.	What record did the said clerk keep of the courts reasons (Delivered by (named judge)) for refusing my said motion for leave of appeal?	Y	Y		
q.	What is the recorded date of receipt of my objections to the report on taxation issued by [name] in respect of his alleged taxation of the defender's/respondent's alleged account of expenses?	Y	Y		
r.	Which rule/instruction manual was the clerk following in issuing an extract in the sum of £2466.06 on 26 th February 2004 when my objections to [name]'s said report on taxation was lodged in court long before the said date of 26 th February 2004?	Y	Y		
s.	When did the said clerk become aware of the lodgement of my said objections to the said report of taxation?	Y	Y		
t.	Being so aware, did he/she ask the defender/respondents' alleged solicitors (named), to return the said extract to the Court of Session registry?	N	N/A		
u.	a. if the answer to question t. above is 'yes' when did the DPCS receive the extract back from (named) solicitors? b. if the answer to question t. above is 'no' why didn't the said clerk (who issued the said extract for £2466.06) ask for the return of the said extract from (named)?	Y	Y		
v.	records will show the deep and extensive involvement of the clerk of	Y	Y		



	<p>the first division [name] in processing my said motion for objections and in:</p> <ul style="list-style-type: none"> • deciding if the Inner House or the Outer House was the proper court to hear my said objections • which judges would hear the said objections • deciding how I myself should pursue my said objections and • case management <p>a. which rules of court provided him, the clerk of the first division the power to meddle/involve himself in affairs which have nothing whatsoever to do with his job title and job description in his contract of employment?</p> <p>b. is he the real DPCS, wearing the cloak of the clerk to the first division?</p> <p>c. Was he not the DPCS in 1992/93?</p> <p>d. What was his civil service grade then if he was the DPCS in 1992/93?</p> <p>e. What is his civil grade now?</p>				
w.	<p>Is [name] a member of one of Scotland's</p> <ul style="list-style-type: none"> a. ethnic minority groups? b. if the answer is yes, is the said ethnic minority group the same to which the following individuals belong – <ul style="list-style-type: none"> i. [name] (SUPRA) ii. [name], partner of [named firm] (SUPRA) iii. [name], the advocate instructed by [name] of [named firm] and who appeared before [named judges] at the said hearing of 23rd April 2003 presided over by [named judge] (SUPRA)? 	Y	N	38(1)(b)	<i>Upheld – information withheld</i>
x.	Was (named judge) (SUPRA) aware that following proper procedure,	N	N/A		



	he should not have been one of the 3 judges (albeit not the presiding judge) of the hearing of 15 th December 2004, presided over by (named judge) as he himself was one of the 3 judges of the hearing of 23 rd April 2003 which dismissed my appeal and awarded expenses to the defender/respondent [...]				
y. a.	Who appointed [name] to the post of Auditor to the Court of Session?	Y	N		<i>Directed to Justice Dept / Auditor of Court - Breach of Part 1: Failure to respond –. No action required.</i>
b.	Was the position advertised in the press?	Y	N		<i>As above</i>
c.	If the answer to b. above is 'yes' the names of the publications, (eg the Scots Law Times, the Scotsman, the Herald of Glasgow, The Journal) dates and page number please?	Y	N		<i>As above</i>
d.	Even if there was no advertisement for the said post, was there any competition for the post and a selection process?	Y	N		<i>As above</i>
e.	If the answer to d. above if 'yes' what are the names (other than [name], of course) of the candidates for the position?	Y	N		<i>As above</i>
f.	[Name]'s date of appointment please?	Y	N		<i>As above</i>
g.	What are the terms and conditions of his appointment?	Y	N		<i>As above</i>
h.	Who does [name] report to?	Y	N		<i>As above</i>
i.	What disciplinary procedures are [name] subject to?	Y	N		<i>As above</i>
j.	Considering the serious allegations of misconduct and malpractice	N	N/A		



	contained in my said objections against [name], why has he not faced an official inquiry?				
k.	What are the recorded reasons for (i) Allowing [name] of [company] (who are not solicitors) to represent the defender/respondent [name] when: [various assertions about the events surrounding this case] (ii) for not seeking from [name] any explanations for the absence of any members of staff of [named firm of solicitor] at the said taxation? iii) [name] holding the view that he could not enquire into the allegation in my objections that the hearing of 23 rd April 2003 before [named judges] was prima facie incompetent as the rules of court did not provide for a hearing of that kind when the applicant's note of appeal did not seek an extension of time for appealing to the Court of Session? iv) Not dealing with any of my objections except the one about the lack of competency of the hearing of 23 rd April 2003 and declaring the taxation to be 'over' without dealing with those objections?	Y	N		<i>As above</i>
z.	Is the proverbial tax-payer (through Scottish Executive, Justice Department, Scottish Court Service; or other Government Agencies or Quangos) paying for the defence of my Civil Action against name [case reference specified], [name] being defended by [named firm of solicitors]?	N	N/A		



Request 3 dated 5 February 2006

No:	Question	Valid Request? (Y/N)	Provided? (Y/N)
	[Person C]		
1.	What is your job title?	Y	Y
2.	Who in the SCS office is responsible for the performance of the Principal Clerk of Session, his/her deputy, the deputy-in-charge of the offices and the Court of Session Registry Clerks?	Y	Y
3.	Who (i.e. SCS employees <u>or</u> a training company) provide training to the individuals referred to at 2 above to enable them to deal with FOI (supra) enquiries?	Y	Y
4.	In your letter of 25/7/05 to myself you referred to SCS Technical Handbook (or SCIM Manual), Does the said manual contain Operations instructions to Court of Session staff?	Y	Y
5.	(a) If the answer to 4 (above) is 'yes', can you please let me have a copy of the papers of the said manual which provide instructions, step-by-step, for dealing with Sheriff Court appeals, and the letter to be sent out to the applicant, containing instructions about such things as Appeal prints, Motion for the first order, court fees etc. (b) If the answer to question 4 (supra) is 'No' can you please send me a copy of the instructions issued by SCS to the Court of Session staff for dealing with Sheriff Court appeals, <u>from the stage</u> the note of appeal and the relevant case papers reach the <u>DPCS to the stage</u> when the <u>first letter</u> (containing instructions about appeals prints motion for the <u>first order</u> and court fees etc) is sent off to the appellant?	Y	Y
6.	I transmit herewith 2 letters. The first dated 27/1/06 and from Court of Session Clerk [name] and the other from the curiously titled 'Depute in Charge of Offices', [name]. You will see that both the letters are addressed to myself. I have the following queries in respect of the said 2 letters.		
	<i>SR No 1 – Letter From [name]</i>		



a.	Since the format of the letter is <u>not</u> the standard letter which is sent out to an appellant who is a Party Litigant, the reason for the discriminatory treatment?	N	N/A
b.	Since the letter was drafted on the same day (i.e. 27/1/06) on which the DPCS received my 11 page letter containing request for information under the Freedom of Information (Scotland) Act 2002 <u>and</u> since questions I(a) to (g) were about the appeals to which [name] was referring to, why there is:- a. No mention of these questions? b. No answers there to and	N	N/A
SR No 1 – Letter From [name] (supra)			
c.	No acknowledgement of my said letter (supra) containing requests for information under the said Act of 2002?	N	N/A
SR No 2 – From [name]			
1.	Which particular school of logic and training manual was she following in not acknowledging receipt of my said letter containing the said requests under the said Act of 2002 <u>until</u> she received my letter of 2/2/06?	N	N/A
2.	Why is it that on receipt of my said letter of 24/1/06 (supra) transmitted by fax on 26/1/06 after office hours (the letters containing my said requests under the said Act of 2002), she didn't realise that:- (a). There is nothing in the Freedom of Information (Scotland) Act 2002 to suggest that one cannot send the information sought before the 20 day period if the information sought was available on the day the provider received the request for the said information. (b). Questions I (a) to (g) (supra) in my said letter, received by [name], were requested simply because of [name] failure (deliberate) to follow proper procedure and notify me within 3 days of the receipt of my said note of appeals and case papers, of the receipt of the note of appeals and if a reference 40.12(4) was made. (c). The said questions I(a) to (g) (supra) ceased to be requests for information under the said Act of 2002 the moment the letter containing the said questions reached [name] on 27/1/06, as on the very same day she had in her possession the information sought, instructed [name]	N	N/A



	to write to me about my said appeals and was fully aware that I was anxiously waiting for the said information?		
--	---	--	--



Request 4 dated 6 March 2006

No:	Question	Valid Request? (Y/N)	Provided? (Y/N)	Section	Comment
	[Person D]				
1.	As a court services manager, what supervisory control do you have over this clerk?	Y	Y		
2.	How long has he been working in Scottish Court Service?	*Y	Year provided, full date withheld	38(1)(b)	Upheld – withhold information
3.	Is he a civil servant?	Y	Y		
4.	If he is a civil servant, what is his civil servant grade (not job title)?	*Y	Y		
5.	Since when is he working as an appeal clerk?	*Y	Month and year provided, full date withheld	38(1)(b)	Upheld – withhold information
6.	Do you have access to the records of his education and training?	N	N/A		
7.	Is he aware that he works for the Scottish Court Service and not for the person who currently holds the position of sheriff principal of (named sheriffdom)?	N	N/A		
8.	Is he aware of the constitutional divide between him (a cog in the court – administrative wheel) and the person referred to at paragraph VII at the bottom of page 1 of this letter, a member of the Scottish Judiciary?	N	N/A		
9.	Is he aware that he is not entitled to harass a court user even if a high ranking member of the Scottish judiciary asks him to do so? (is a judge of an inferior court)	N	N/A		



No:	Question	Valid Request? (Y/N)	Provided? (Y/N)	Section	Comment
10.	What evidence do you have in support of the contents of his said letter?(an interlocutor signed by [name])	N	N/A		
11.	Is he (ie [Person C]) aware that the 'decision' allegedly of [name] is not a judicial decision?	N	N/A		
12.	Did it occur to him that questions of competency of an appeal are determined in a judicial hearing of which adequate notice is given to the parties to the appeal, after hearing the parties and by a judge who is seen to be in compliance with the provisions of Article 6(1) of the ECHR?	N	N/A		
13.	Was he aware of the procedures set out in the practice notes (for dealing with appeals in the sheriff court) issued by sheriff principal [name] in February 2005?	N	N/A		
14.	Was he also aware of the facts and instances of the reported cases cited in my said note of appeal, particularly the one titled (named case)?	N	N/A		
15.	Did it occur to him that in asking him (if such a thing did happen!) to write to me in the terms set out in his (ie [Person C's) letter of 2 nd March 2006, [name] was acting contrary to established practice, instructions contained in the practice note issued by Sheriff Principal [name] in February 2005 (SUPRA), and the decision of the Inner House in (named case) (SUPRA)?	N	N/A		
16.	Did it occur to him that the appeal before [name] (SUPRA) was not an appeal in terms of Section 27 or 28	N	N/A		



No:	Question	Valid Request? (Y/N)	Provided? (Y/N)	Section	Comment
	of the Sheriff Court (Scotland) Act 1907?				
17.	Was he aware that my said appeal was not: (A) for consideration by [name] because of the facts and laws set out in my motions for his declining jurisdiction in [two specified cases]? (B) For any other sheriff principal who is: a) not aware of the distinction between a statutory appeal and a common laid appeal; and b) not conversant with the decisions and observations of the Inner House in [three specified cases], the full citations of which were on the schedule and other papers accompanying the said note of appeal.	N	N/A		
18.	Was he aware of the facts that(1) in [specified case] (SUPRA) now before the Inner House, [name]'s alleged misconduct is under judicial scrutiny and the decisions of [named judge] in rejecting a reference in terms of ROC40.12(4) by [name] (SUPRA) deputy and (2) in rejecting [named firm of solicitors] opposition to the said appeal on exactly the same grounds on which the said ROC40.12(4) reference was made on 28 th Feb 2006 (sitting on his own in the outer house for determining the said ROC40.12(4) reference and sitting with [named judge] and another judge in the Inner House at a single bill hearing) struck a fatal blow to [name]'s continuing abuse of his appointment as sheriff principal of [named	N	N/A		



No:	Question	Valid Request? (Y/N)	Provided? (Y/N)	Section	Comment
	sheriffdom] and attempting to conduct himself in accordance with his own invented procedures, rather than in accordance of the established and published procedures?				
19.	If he was aware that [name] was abusing his power of office by not following proper procedures, did he report the matter to his superior officers, as [name]'s said decisions were not judicial decisions?	N	N/A		