

Re-use of Public Sector Information Regulations 2015 (RPSI)

Decision notice

Date: 30 April 2024

Public Authority: National Records of Scotland
Address: HM General Register House
2 Princess Street
Edinburgh
EH1 3YY

Decision (including any steps ordered)

1. The complainant submitted a request to the National Records of Scotland (NRS) under the Re-use of Public Sector Information Regulations 2015 (RPSI) to re-use information from selected historical records.
2. The Commissioner's decision is that NRS was correct to refuse the re-use request under regulations 4(1), 5(1)(b) and 7(2) of RPSI.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 7 October 2022, the complainant requested the re-use of information of the following description:

	Information Type	Date	Information Requested
	Census Records		
1.	Scottish Census Records	1841 to 1911	All digital images of the census records
			Digital indices of each of the census records
	Statutory (Civil) Registers		
2.	Births	1855 to 1921	All digital images of the birth records
			Digital indices of each of the birth records
3.	Marriages	1855 to 1946	All digital images of the marriage records
			Digital indices of each of the marriage records
4.	Deaths	1855 to 1971	All digital images of the death records

			Digital indices of each of the death records
	Old Parochial Registers		
5.	Births & Baptisms	1538 to 1854	All digital images of the births and baptism records
			Digital indices of each of the birth and baptism records
6.	Banns & Marriages	1538 to 1854	All digital images of the banns and marriages records
			Digital indices of each of the banns and marriage records
7.	Deaths & Burials	1538 to 1854	All digital images of the death and burials records
			Digital indices of each of the death and burial records
	Low Churches/Dissenters Parish		

8.	Births & Baptisms	1746 to 1921	All digital images of the births and baptism records
			Digital indices of each of the birth and baptism records
9.	Banns & Marriages	1746 to 1946	All digital images of the banns and marriages records
			Digital indices of each of the banns and marriage records
10.	Deaths & Burials	1746 to 1971	All digital images of the death and burials records
			Digital indices of each of the death and burial records
	Valuation Rolls		
11.	Valuation Rolls	1855 to 1940	All digital images of the valuation rolls records
	Wills		

12.	Wills & Testaments	1513 to 1925	All digital images of the wills and testaments records
			Digital indices of the wills and testament records
13.	Soldiers' Wills	1857 to 1965	All digital images of the soldiers' wills records
			Digital indices of the soldiers' wills records
	Prison Registers		
14.	Prison Registers	1867 to 1879	All digital images of the prison records
			Digital indices of the prison records
	Photographs		
15.	Images taken from medieval documents and photographs	18 th and 19 th Century	All digital images of the photographs
			Digital indices of the photographs
	Public Register of All Arms and Bearings in Scotland		

16.	Coats of Arms	1672 to 1921	All digital images of the coat of arms records
			Digital indices of the coat of arms records
	Military Service Appeals Tribunal Records		
17.	Military Service Appeals Tribunal Records	1916 to 1918	All digital images of the military service appeals tribunal records
			Digital indices of the military service appeals tribunal records

5. A response was provided on 2 December 2022 in which NRS stated that the application for re-use was to be refused on the basis of regulations 5(1)(b) and 7(2) of RSPI.
6. Upon receiving this response, the complainant submitted an internal review request on 4 May 2023, and made an additional request for re-use of 1921 Scottish Census records. NRS provided its internal review response on 21 June 2023, in which it considered the requested information and the 1921 census records. NRS maintained its original position, and added regulation 4(1) of RPSI to both sets of information.

Scope of the case

7. The complainant contacted the Commissioner on 2 August 2023 to complain about the way their request for information had been handled.
8. This decision notice considers whether NRS dealt with the request for re-use in accordance with the requirements of RPSI, looking specifically at its application of regulations 4(1), 5(1)(b) and 7(2) to the requested information.

Reasons for decision

Regulation 4(1)

9. Regulation 4(1) states that subject to paragraph (2), re-use means the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body's task for which the document was produced.
10. In its internal review, NRS explained that its public task is "to collect, preserve and produce information about Scotland's people and history and make it available to inform current and future generations.
11. The purpose for which the complainant proposed to re-use the requested information is as follows:
 - To create a consolidated dataset of the requested information together with other sources of genealogy-related data from a variety of countries;
 - Using the data in the requested information within proprietary software tools which (i) assist users in building their family tree by comparing data already in a family tree with the data in the requested information and suggesting family connections, and allowing users to connect via a messaging system with other users who viewed the same data".
12. NRS explains that the above purpose does not meet the definition of 're-use' provided by regulation 4(1) as it is not a purpose other than the initial purpose within NRS's public task.

Regulation 5(1)(b)

13. Regulation 5(1)(b) states that the regulations do not apply to a document where a third party owns relevant intellectual property rights in the document.
14. In their internal review request, the complainant disputed the application of this exception and stated that "contrary to RSPI's principle of openness and transparency, you have failed to explain which of the requested documents you consider are protected by third party intellectual property rights".
15. In its internal review response, NRS responded to this by providing a table showing the intellectual property holders of the requested information.

16. NRS explained that the Regulations do not apply to the parts of the requested information, where the intellectual property rights are held by a third party.

Regulation 7(2)

17. Regulation 7(2) states that a public sector body which is a library (including a university library), museum or archive holding intellectual property rights in a document may permit re-use of that document.
18. In its initial response, NRS explained that it was exercising discretion as an archive and not permitting re-use of the documents in which NRS holds intellectual property rights.
19. In its internal review response, NRS further explained that the Registrar General for Scotland (RG) and the Keeper of the Records of Scotland (the Keeper) are non-ministerial roles within the Scottish Administration and both offices are held by the NRS Chief Executive.
20. Therefore, where the intellectual property rights, regarding the requested information, were held either by the RG or the Keeper, the request was refused under the above regulation.
21. In its internal review request, the complainant raised the issue of the refusal of the request under 7(2), and states that the refusal is "discriminatory and contrary to the general principle that cultural sector information should be available for re-use."
22. The complainant then further explained that NRS have previously permitted re-use of the requested documents by a number of third parties and raises the issue of Regulation 14(1) which prohibits public sector bodies from entering into exclusive arrangements, subject to limited exceptions.
23. In response to this, NRS explained that various legal arrangements between the Keeper and the Genealogical Society of Utah remain in force, and that RG has entered into agreements with Public Health Scotland, the University of Edinburgh and various other public bodies, including libraries. However, it explains that none of these were exclusive arrangements.

24. The Commissioner raised with NRS, the implementation of the Regulations in regards to regulations 13 and 14. Regarding regulation 13, NRS explained that where NRS contracts with third parties they are bound by Public Contracts Scotland Regulations 2015. It further explained that under regulation 19, of the above legislation, a contracting authority must (a) treat economic operators equally and without discrimination and (b) act in a transparent and proportionate manner.
25. Looking at regulation 14, NRS explained that "any agreements which permits the re-use of NRS public sector information for other purposes, following a request under the 2015 regulations would be drawn up by our Procurement team. It would be a standard provision in any such agreement that permission to re-use is non-exclusive."

The Commissioner's decision

26. Having carefully considered the detailed submissions of the complainant and the equally detailed responses of the NRS, and having reviewed the websites, mentioned in the complaint's internal review request, the Commissioner is satisfied that NRS was correct to apply regulations 4(1), 5(1)(b) and 7(2) to the requested information.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Gerrard Tracey
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