

COURT OF SESSION UPHOLDS SCOTTISH INFORMATION COMMISSIONER'S DECISION IN FIRST FREEDOM OF INFORMATION APPEAL CASE

Scottish Information Commissioner

1 December 2006

The Scottish Information Commissioner today (1 December 2006) welcomed the decision of the Court of Session to uphold his findings in the first appeal under the Freedom of Information (Scotland) Act 2002 (FOISA). The Common Services Agency of the NHS (National Services Scotland) appealed against the Commissioner's ruling that it should provide information on the incidence of childhood leukaemia in Dumfries and Galloway.

In its decision, the Court of Session upheld the Commissioner's view that the information could be provided in a form which would not risk patient identification, and that it was reasonable to require the CSA to do so.

The Commissioner, Kevin Dunion said:

"I am pleased at this landmark decision. This is the first appeal to the Court of Session concerning one of my decisions and, coincidentally, it also involves the first ever application to me under the Freedom of Information (Scotland) Act. The Court has confirmed that authorities should not take a narrow view of what information should be provided and has concluded that I have a wide discretion to specify the form in which information should be released.

In this case I accepted that raw data should not be released, but I concluded that the authority could and should provide information in a modified form. This would at least give some indication of the incidence of childhood leukaemia without any risk to patient confidentiality."

The case concerned an application from Mr Michael Collie acting on behalf of Mr Chris Ballance MSP. He requested the recorded incidents of childhood leukaemia by census ward in Dumfries and Galloway. When this request was refused, he applied to the Scottish Information Commissioner, who decided in August 2005 that the information could either be provided in total for the Health Board area, or at ward level after a statistical technique (known as barnardisation) had been applied.

The CSA appealed against the decision to the Court of Session which heard the appeal in November 2006. The Opinion of the Court was issued on 1 December 2006.

Ends

For further information contact Claire Sigsworth on 01334 464610, out of hours, 07976 511752

Notes to Editors:

The Opinion of the Court of Session on this case is available to view online here:
<http://www.scotcourts.gov.uk/opinions/2006CSIH58.html>

The Commissioner's decision on the case Michael Collie and the Common Services Agency is available here:

<http://www.itspublicknowledge.info/appealsdecisions/decisions/Documents/decision021.htm>

The Freedom of Information (Scotland) Act 2002

- The Freedom of Information (Scotland) Act 2002 (FOISA) provides a statutory right of access to all information held by Scottish public authorities. This right came into effect on 1 January 2005.
- Around 10,000 public authorities in Scotland are covered by FOISA. They include the Scottish Parliament and Executive, police forces, the NHS, local authorities, education institutions, and publicly owned companies.
- Information can only be withheld by a public authority if it falls under one of the exemptions listed in FOISA. If an individual believes an authority is wrong to withhold information, they ultimately have a right of appeal to the Scottish Information Commissioner, who can require release.
- The parties to any case have the right to appeal against the Commissioner's decision to the Court of Session on a point of law only.

The Scottish Information Commissioner

- Kevin Dunion the Scottish Information Commissioner is a fully independent public official, appointed by the Queen on the nomination of the Scottish Parliament.
- His duties and powers are to ensure that people get the information from Scottish public authorities to which they are entitled.
- His role actively promotes and enforces compliance with FOISA.

Source,

<http://www.itspublicknowledge.info/resources/media/pressreleases/pressrelease23.htm>