

Director and Principal Clerk



Mr T Minogue
94 Victoria Terrace
Dunfermline
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KY12 0LU

**Supreme Courts
Parliament House
11 Parliament Square
Edinburgh
EH1 1RQ**
DX 549306 Edinburgh 36

5 May 2015

Dear Mr Minogue

Freedom of Information (Scotland) Act 2002 – Request for Review

I refer to your e messages dated 9 and 10 April 2015 in which you ask that a review of the reply to your request of 27 March 2015 be undertaken. This is in terms of Section 21 of the above Act.

I have investigated whether we hold any material, in respect of the hearing held on 20 March 2015 in the case with reference A229/13 Stephen House QPM v Murat Aksakalli & anr.

I find that the Scottish Courts and Tribunal Service (SCTS) does not hold any notes, correspondence or any other communications in respect of the hearing on Friday 20 March 2015 in the case reference A229/13 Stephen House QPM v Murat Aksakalli & anr, other than those filed in the case papers which, as was stated in the response dated 1 April to your request for information, you are entitled to view at any time.

This information is therefore otherwise accessible in terms of section 25 of the FOI(S) Act 2002. I therefore uphold the decision of Yvonne Anderson, dated 1 April 2015, in this regard.

In particular you requested “the note of Lord Philip read out to parties which resulted in a much briefer Interlocutor”.

The SCTS does not hold this information (see section 17) and, as Miss Anderson advised in her response of 1 April, the Judiciary are not subject to the Freedom of Information (Scotland) Act 2002.

Members of the judiciary are not public authorities in terms of Schedule 1 of the Freedom of Information (Scotland) Act 2002 (“FOISA”). Accordingly, Lord Philip’s notes are not subject to FOISA.

I should explain that the decision of the court may be given orally by the Judge at the hearing or the court may make 'avizandum', where judgment is deferred to another date for an oral or written decision to be given later. On this occasion I note that the Judge gave his decision orally at the hearing.

I note that you expected the interlocutor to contain all that was said orally by the Judge. However, the interlocutor is a formal order made by the court containing its decision and it does not provide the reasoning behind the decision.

You say that after a short adjournment his Lordship reconvened the court and read his decision out. As noted before, his Lordship did not produce a written judgment, therefore any note that was read out would be his Lordship's personal notes and are not held by the SCTS. However, I can advise that his Lordship confirmed that there is no written decision, and that personal notes are used as an aide memoire.

You have asked for further information in your request for review and it would be usual for that to be treated as a new request for information under the above act.

The new information requested is:

"Throughout the proceedings a young lady with a wig sat in front of me, apparently typing a note, a record of all that was said by the participants in courtroom that day. I could have reached over and touched her and in fact did hand her copies of my two deliveries, linked above, for her assistance and I would ask you to clarify or inform me of the title and/or name of this official. Was she the stenographer or clerk?"

Given the linkage to my explanation of the matter above, and in the interest of providing an efficient response, I have however provided this information as a necessary part of the review.

The young lady that you refer to was the clerk of court, Mrs Morgan. I note that you have corresponded with Mrs Morgan, by e-mail (copies attached). The clerk does not take a record of all that is said. Among other duties, the clerk is tasked with drafting the interlocutor mentioned above. The clerk of court also undertakes work that is not associated with the case(s) being heard in court, while clerking the court.

I can advise that the Court of Session does not employ stenographers or shorthand writers. Where a hearing is required to be recorded, such as a proof hearing where evidence is led, this is undertaken mechanically by audio/digital systems.

I hope that this review has satisfied your request for information.

However, should you still feel dissatisfied with this decision or the manner in which your review has been carried out, 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

Following receipt of the Commissioner's decision, there is an appeal to the Court of Session, on a point of law basis only. Any such appeal must be made within 42 days from the date of intimation of the decision notice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graeme Marwick', with a long horizontal flourish extending to the right.

GRAEME MARWICK
Director and Principal Clerk

Prentice, Gillian

From: Morgan, Lorna
Sent: 10 April 2015 16:10
To: Prentice, Gillian
Subject: FW: Interlocutor 20 March 2015

From: Morgan, Lorna
Sent: 25 March 2015 11:18
To: 'Tom Minogue'
Subject: RE: Interlocutor 20 March 2015

Dear Mr Minogue

As explained below I have already forwarded a copy of the interlocutor to you. No party to the action receives a copy with the judges signature (a judge's signature should never be photocopied).

Regards

Lorna Morgan
Depute Clerk of Session

From: Tom Minogue [<mailto:tomminogue01491@gmail.com>]
Sent: 25 March 2015 11:06
To: Morgan, Lorna
Subject: Re: Interlocutor 20 March 2015

I could see this being a problem as I have three independent witnesses who heard the ruling of Lord Philip as well as my friend (see pic attached).

I will in any case contact his Lordship privately as I need his comments to take up my question of public interest in a possible future malfeasance action.

Please provide a copy of the signed interlocutor of Lord Philip ASAP.

Yours sincerely,

Tom Minogue.

On 25 March 2015 at 10:05, Morgan, Lorna <LMorgan@scotcourts.gov.uk> wrote:

Mr Minogue

Lord Philip read out an *ex tempore* judgement to the Court, which will not be put in writing. The only interlocutor available is the document that was forwarded to you and this has been signed by His Lordship. There will not be any reference made regarding the statement.

Kind Regards

Lorna Morgan

Depute Clerk of Session

From: Tom Minogue [mailto:tomminogue01491@gmail.com]

Sent: 25 March 2015 09:47

To: Morgan, Lorna

Subject: Re: Interlocutor 20 March 2015

Lorna, Lord Philips read out his interlocutor on Friday and it contained a statement that he confined his decision to the submissions regarding the Pursuer's condescendence and did not consider it for him to address the public interest question of malfeasance that I had raised.

The latter part of his statement is missing.

Can I see a copy of his signed interlocutor?

Regards, Tom Minogue.

On 25 March 2015 at 09:35, Morgan, Lorna <LMorgan@scotcourts.gov.uk> wrote:

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