



Scottish Information  
Commissioner

## **Decision 224/2007 Mr P and the Scottish Legal Aid Board**

*Applications for advice and assistance funding*

**Applicant: Mr P**  
**Authority: Scottish Legal Aid Board**  
**Case No: 200700526**  
**Decision Date: 3 December 2007**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## Decision 224/2007 Mr P and the Scottish Legal Aid Board

***Information relating to applications for advice and assistance funding – information provided by the authority was not the information requested by the applicant – Commissioner concluded that authority’s interpretation of the request was unreasonable***

### Relevant Statutory Provisions and Other Sources

---

Freedom of Information (Scotland) Act 2002 (FOISA): section 1(1) and (3) (General entitlement)

The full text of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

### Facts

---

Mr P requested information from the Scottish Legal Aid Board (SLAB) relating to applications for advice and assistance funding. SLAB provided Mr P with information in response to his questions, but Mr P complained that the responses he had received were not satisfactory as they did not provide him with the information he had requested. Following a review which upheld the original decision, Mr P was dissatisfied with SLAB’s response and applied to the Commissioner for a decision.

During the course of the Commissioner’s investigation, SLAB conceded that it had not fully appreciated Mr P’s requests and Mr P was provided with the information he had originally requested.

The Commissioner found that SLAB had failed to interpret Mr P’s requests reasonably and as a consequence had failed to deal with them in accordance with section 1(1) of FOISA.



## Background

---

1. Mr P wrote to the Scottish Legal Aid Board (SLAB) on 15 January 2007, in relation to a complaint concerning the provision of advice and assistance cover. In Mr P's letter he asked for the following information to be provided to him under the provisions of FOISA:
  - a) How many applications for advice and assistance cover to enable a representative of McClure Collins [Solicitors] to attend a Parole Board for Scotland (PBS) interview at HMP Peterhead were made in relation to interviews which took place in 2006. This request did not include applications made in relation to tribunals at which representation may have been requested.
  - b) How many advice and assistance applications made by McClure Collins in the circumstances set out above were granted and how many were refused.
  - c) A list of any other solicitor or firm of solicitors which had been granted advice and assistance cover to attend a PBS interview with a prisoner at HMP Peterhead held during 2006.
2. SLAB responded to Mr P on 12 February 2007. In its letter SLAB informed Mr P that the advice and assistance records for the PBS Cases in 2006 had been checked and all the records had been inspected for cases where increases in advice and assistance cover had been requested and granted for PBS matters, where the client was in HMP Peterhead (excluding cases where representation was requested for a tribunal).
3. In relation to Mr P's first question, SLAB responded by providing him with information about cases where increases in authorised expenditure had been requested by McClure Collins to enable them to visit clients in Peterhead to offer advice in relation to PBS matters. SLAB advised that the records did not show which cases involved attendance at a PBS interview, but suggested to Mr P that he might be able to get the information he required directly from McClure Collins.
4. In response to Mr P's second question, SLAB provided him with details about the number of specific requests that had been granted for attendance at PBS interviews and how many had been refused. SLAB also explained that its records did not show if the number of cases mentioned in its response to his first question also included attendance at a PBS interview.



5. In relation to Mr P's third question, SLAB informed him that its records showed that no requests had been granted during 2006 to any other solicitors for advice and assistance cover to attend a PBS interview with a prisoner in Peterhead.
6. On 20 February 2007, Mr P wrote back to SLAB and complained that the responses he had received to his questions were not satisfactory as they did not provide him with the information he had requested. Mr P also questioned the accuracy of some of the information that had been provided by SLAB in its response of 12 February 2007. Mr P restated the information he was seeking and asked SLAB to carry out a review of its response. The outcome of this review was intimated to Mr P in a letter dated 20 March 2007.
7. In its review notice, SLAB advised Mr P that the information he had been supplied with had been considered and, after carrying out a number of checks, SLAB was satisfied that the original information supplied to him had been correct.
8. However, SLAB stated in its letter to Mr P that it had not provided him with details of advice and assistance intimations granted by solicitors. Instead, he had been supplied with details of cases where an increase in expenditure was sought. SLAB explained to Mr P that such information had been supplied to him since this was the basis of his original complaint.
9. In relation to Mr P's second and third questions, SLAB advised him that it had reviewed how it had obtained the information that had initially been provided to him, and it was of the view that this information was correct. However, in relation to Mr P's third question concerning other solicitors who had been granted advice and assistance cover to attend a PBS interview with a prisoner held at HMP Peterhead during 2006, SLAB had restricted its answer to cases where "increase requests" had been made.
10. On 4 April 2007, Mr P wrote to my Office, stating that he was dissatisfied with the outcome of SLAB's review and applying to me for a decision in terms of section 47(1) of FOISA.
11. The application was validated by establishing that Mr P had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



## The Investigation

---

12. On 25 June 2007, SLAB was notified in writing that an application had been received from Mr P and was asked to provide the investigating officer with its comments on the application in terms of section 49(3)(a) of FOISA and with other specified items of information required for the purposes of the investigation.
13. The investigating officer advised SLAB that Mr P claimed he had been provided with inaccurate and misleading information in relation to the first of his questions. Mr P complained that the terms of his request were not in fact confined to requests for advice and assistance cover where there was an increase in authorised expenditure, but embraced all applications for advice and assistance cover. Mr P also claimed that SLAB had not stated how many persons named by him had interviews in 2006 and had not offered any further information about the number of advice and assistance grants where an increase was not requested: the investigating officer asked SLAB if it would be possible for such information to be provided to Mr P at that stage.
14. In relation to Mr P's second question, SLAB was informed that Mr P had intended this to refer to all advice and assistance applications – not simply cases where increases were requested – and was of the view that he should have been provided with a breakdown of those applications which were granted or, alternatively, refused. He also claimed that the information supplied by SLAB was incorrect as he believed that a number of applications for advice and assistance had been requested by McClure Collins in 2006. The investigating officer sought clarification in relation to these matters.
15. As regards Mr P's third question, SLAB was informed that Mr P was of the view that SLAB should not have distinguished between advice and assistance 'cover' and advice and assistance 'increase'. Mr P believed that, in light of the response to his request for review, further information should have been provided to him. He cited SLAB's review response, which stated: "... other firms have certainly visited clients in HMP Peterhead to discuss PBS matters and probably did receive increases in authorised expenditure". However, such information had not been provided to Mr P and the investigating officer asked SLAB to explain this.



16. SLAB responded to the investigating officer's letter on 16 July 2007. It stated that, having reviewed matters, it had been able to identify (with some qualifications) the information sought by Mr P. The people who had been involved with Mr P's initial requests had been consulted and it was conceded that the nature of his query had not been fully appreciated. SLAB announced that the information was available and asked for further advice on how to proceed.
17. The investigating officer asked SLAB if it could provide the information to Mr P, which it did. Having received the information, Mr P advised that he wished the investigation of SLAB's original withholding of the information to continue to a decision. Further comments were sought and obtained from SLAB on its handling of the case and these will be considered in my analysis and findings below.

### **The Commissioner's Analysis and Findings**

---

18. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by Mr P and SLAB and am satisfied that no matter of relevance has been overlooked.
19. In SLAB's response to Mr P's request for review, dated 20 March 2007, SLAB informed Mr P that its systems had been interrogated in order to obtain details of all the advice and assistance cases received in 2006 for PBS matters. This was then narrowed down to cases where the Board had granted increases in authorised expenditure, and then to the cases where the client's address was in HMP Peterhead, and finally to cases where McClure Collins were the solicitors.
20. SLAB informed Mr P that it had considered the information that had initially been supplied to him and, after carrying out a number of checks, it was satisfied that the information was correct.
21. However, based on the information Mr P had provided to SLAB in his letter of 20 February 2007 (his request for review), SLAB also stated that it was not entirely convinced that the information it had supplied to him was necessarily the information he thought he had requested. SLAB was of the view that this partly explained the divergence of view about whether the information supplied had been inaccurate or did not otherwise comply with the requirements of FOISA.



22. SLAB stated in this letter that it had not provided Mr P with details of advice and assistance intimations granted by solicitors. Instead, he had been supplied with details of cases where an increase in expenditure had been sought. SLAB explained to Mr P that such information had been supplied to him since this was the basis of his original complaint.
23. It therefore appears to me that SLAB interpreted Mr P's requests for information in line with the terms of his complaint (contained in the same letter as his requests), rather than dealing with those requests separately. This led to SLAB providing answers to questions that it thought Mr P should have been asking, rather than providing him with the information which would have answered his three questions. Mr P had explicitly asked for the information to be provided to him separately under the provisions of FOISA and I am satisfied that the terms of his requests were quite clear.
24. Similarly, in relation to Mr P's third question, SLAB advised him in its review notice that it had provided information relating to instances where "increase requests" were made to cover attendance at an interview, rather than providing the information that had been requested. Mr P requested a list of any other solicitor or firm of solicitors which had been granted advice and assistance cover to attend a PBS interview with a prisoner held at HMP Peterhead during 2006. That information was subsequently provided to Mr P by SLAB during the course of my investigation.
25. Although Mr P obtained the information he had originally requested he was dissatisfied with the way in which SLAB had dealt with his requests. Mr P was of the view that SLAB's delay in providing him with the information had frustrated a complaint he had made to the Scottish Public Services Ombudsman about SLAB.
26. On 14 November 2007, my investigating officer contacted SLAB to obtain further comments on the way it had handled Mr P's requests. In its response of 23 November 2007, SLAB stated that Mr P's initial requests for information were apparently well informed about legal aid processes and requested specific information. SLAB viewed this fact as important in order to contextualise its decision not to seek any clarification of the information required.
27. SLAB was of the view that its initial response had addressed fully Mr P's information requests by providing the recorded information that was held in relation to the requests as they had been framed. SLAB explained that the officer who dealt with Mr P's requests had previously received a very similar request and thought it likely that Mr P had not recognised the fact that there were decisions an applicant's own solicitor took in relation to granting legal advice and assistance, separate from SLAB's decision making role when a solicitor sought an increase in authorised expenditure.



28. SLAB was of the view that its response had addressed Mr P's specific information requests in relation to decisions that SLAB took and recorded. However, SLAB also recognised that it was likely Mr P had intended to seek information in relation to its records of both intimations of grants of advice and assistance by the solicitor and grants of increases in authorised expenditure by SLAB. It was on this basis that the information had subsequently been extracted and provided to Mr P during the course of the investigation.
29. SLAB noted that Mr P appeared to be satisfied with the information he had subsequently been provided with and stressed that it had endeavoured to provide full, frank and complete information to Mr P. SLAB assured me that, despite suggestions made to the contrary by Mr P, it had absolutely no intention to mislead, prevaricate or cause any inconvenience to Mr P.

### *Conclusion*

30. Having considered both parties' submissions, and taking into account the terms of SLAB's initial response to Mr P's requests and the subsequent review, I am of the opinion that SLAB misinterpreted Mr P's information requests and provided him with information it thought he should have asked for (which was related to the specifics of his accompanying complaint), rather than providing the information he had in fact requested (and which was subsequently provided to him during the course of the investigation). While I can understand that this approach may have been well intentioned, I do not accept that it was justified on a reasonable interpretation of his requests.
31. Section 1(3) of FOISA entitles a Scottish public authority, where such a requirement is reasonable, to notify an applicant of any further information it requires to identify and locate the information the applicant has requested. Here, as I have indicated, it appears to me that Mr P's requests were clear and capable of eliciting a response without resort to such clarification. If, however, SLAB considered it necessary to process the requests other than on the basis of a plain interpretation of their terms, I consider that it should have clarified Mr P's intentions in making the requests before doing so. In arriving at its own interpretation without such clarification, and thereafter processing the requests in accordance with that interpretation (which I would not regard as having any reasonable justification in the absence of confirmation from Mr P that such an interpretation was what he had intended), I consider that SLAB failed to deal with the requests in accordance with section 1(1) of FOISA.





## **Decision**

---

I find that in failing to deal with Mr P's requests on the basis of a reasonable interpretation of their terms, the Scottish Legal Aid Board failed to deal with them in accordance with Part 1 (and in particular section 1(1)) of FOISA.

During the course of my investigation the Scottish Legal Aid Board supplied the information Mr P had requested to him. I therefore do not require any further steps to be taken in response to this decision.

## **Appeal**

---

Should Mr P or the Scottish Legal Aid Board wish to appeal against this decision, there is a right to 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**  
**3 December 2007**



## Appendix

---

### 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.

(...)

(3) If the authority –

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so (specifying what the requirement for further information is),

then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.