

Subject: Access to closed court records held under reference numbers JC26/1947/10, JC36/183 and AD15/47/28.

FOI reference: FOI/19/02427

Date received: 28/10/2019

Date responded: 5/12/2019

Information requested:

Access to a court case held in Forfar Sheriff Court in 1947 held under reference numbers JC26/1947/10, JC36/183 and AD15/47/28.

NRS Response:

We carried a search of our records and discovered that the case was heard at the High Court in Perth, in December 1947. The records related to that case are held by us under reference numbers JC26/1947/10 (trial papers), JC36/183 (court transcript) and AD15/47/28 (precognition).

A sensitivity review has been undertaken on the trial record and court transcript material by the Scottish Courts and Tribunals Service (SCTS). As a result of this, some information in the files has been redacted due to sensitivity issues.

An exemption under section 38(1)(b) of FOISA (personal information) applies to the information in both records, which has been redacted because it is personal data of a third party and disclosing it would contravene the General Data Protection Regulation and Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption. This information concerns the personal details of individuals who are believed still to be alive. These redactions are minimal and will not hinder understanding of the court action.

In addition, both these files also contain information relating to a deceased person's health record. This information has also been redacted as an exemption under section 38(1)(d) of FOISA applies. A common law duty of confidence applies to an individual's health information and these ethical obligations extend even after the individual's death. The exemption under section 38(1)(d) is time limited to 100 years. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption. These redactions are related to post-mortem information of the victim, found in both the trial record and court transcript.

The redacted copies of JC26/1947/10 and JC36/183 are available in digital form at National Records of Scotland.

These can be viewed in the Historical Search Room at General Register House, 2 Princes Street, Edinburgh, EH1 3YY. Further information is available on our website at: <https://www.nrscotland.gov.uk/research/visit-us/historical-search-room>.

Under section 25(1) of FOISA, we do not have to provide information if it is already reasonably accessible by inspection or copying, even if a payment has to be made for it.

The precognition file AD15/47/28 is exempt under Section 34 of FOISA – Investigations by Scottish public authorities and proceedings arising out of such investigations. The data controllers of this record, Crown Office and Procurator Fiscal Service have sanctioned this exemption for all precognition files (and appeal records) less than 100 years old. For further explanation of this exemption please see the annex to this letter.

ANNEX

Section 34 exemptions applied to precognitions and appeal records

Exemptions under section 34(1)(a), (b) and (c) of FOISA (investigations by Scottish Public Authorities and proceedings arising out of such investigations) apply to some of the information you have requested because it is information which has been held by the Crown Office and Procurator Fiscal Service (COPFS) for the purposes of criminal investigations and the institution of criminal proceedings.

COPFS apply section 34(1) exemptions to all precognition and appeal records. There is no harm test in any of these exemptions – information will be exempt simply because it has, at some point, been held by an authority for any of the purposes described under section 34(1). These exemptions are subject to the ‘public interest test’. COPFS recognise that while there may be some public interest in the disclosure of information about individual cases, there is a greater public interest in withholding all information relating to criminal investigations in order not to compromise the informant and witness system, which is essential for an effective justice system. They believe that witnesses would be inhibited from co-operating in criminal investigations if there was a possibility that the information they gave could be disclosed under FOISA, and that the possibility of disclosure would undermine the informant system.

The section 34 exemptions can be applied in perpetuity, subject to public interest. COPFS do not, however, wish this information to be exempt forever and have decided to remove the exemption after 100 years.