

Subject: Request for access to closed court records held under reference numbers JC26/1970/226, JC36/421, JC34/16/137, CS258/1972/6360, CS258/1974/7787, CS258/1982/17243.

FOI reference: FOI/19/02450

Date received: 1/11/2019

Date responded: 16/12/2019

Information requested:

Access to court records concerning a murder trial, also access to Court or Session records in relation to a Petition for appointment of Judicial Factor and two Payment cases held under reference numbers JC26/1970/226 (trial papers), JC36/421 (trial transcript), JC34/16/137 (appeal papers), CS258/1972/6360 (payment case), CS258/1974/7787 (payment case), CS258/1982/17243 (judicial factor).

NRS Response:

A sensitivity review has been undertaken on the two payment cases (NRS ref.: CS258/1972/6360 & CS258/1974/7787) by the Scottish Courts and Tribunals Service (SCTS). The full file is now open for public inspection.

These two records are now accessible and available in digital form at National Records of Scotland.

A sensitivity review has been undertaken also on JC26/1970/226, JC36/421, JC34/16/137 and CS258/1982/17243 by 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 information in all four of these files, 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.

The records JC26/1970/226 and JC36/421 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.

The redacted copies of these files are available in digital form at the National Records of Scotland.

All of the records, open and redacted 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.