



Tel: 0300 020 3000
Text Relay prefix: 18001

By email:

Your ref:
Our ref: R024000

24 November 2020

Dear _____,

I refer to your email dated 28 October 2020 in which you requested a review of our response to you under the Freedom of Information (Scotland) Act 2002 (FOISA) – our reference R024000.

I have been asked to reply and I can confirm that I was not involved in the original consideration of your request.

You have asked for a review of our previous response which explained that the information requested by you was not for recorded information under FOISA and, thus, could not be provided. Your request, specifically was as follows:

*In the COPFS Glossary of legal terms, "corroboration" is defined thus:
"An accused cannot be convicted unless there is evidence from at least two independent sources that the crime was committed and that the accused was responsible for it".*

Can you tell me:

1) The source of this definition?

2) The Prosecution Code published by COPFS states that "In general, for there to be sufficient evidence there must be corroboration, that is evidence from at least two separate sources to establish the essential facts of the case, ..."

Why was "separate" used instead of "independent", when it has a different meaning?

3) Why was the definition given in Renton & Brown's Criminal Procedure, paragraphs 24-69, not used in the above publications?

This gives the definition of corroboration, stating that "The basic requirement is that the crucial features of an offence, the facta probanda, i.e. the fact that the offence was committed and that it was committed by the accused, must be established by evidence from at least two sources".



There is no mention of the word "independent", which is used in the COPFS Glossary of legal terms or "separate", which is used in the Prosecution Code.

4) Can you tell me why COPFS uses the adjectives "separate" and "independent" in front of "sources", where Renton & Brown use neither?

5) If a mistake has been made, what is the procedure for correcting it?

Having reviewed this matter, I uphold the original response from the Crown Office & Procurator Fiscal Service (COPFS). I also confirm that the information you have requested is not recorded by COPFS, therefore, in terms of [Section 17](#) of FOISA, COPFS does not hold the information you have requested.

I interpret your requests to be for our opinion and analysis and not for recorded information. It may assist if I explain that information on the website of the Scottish Information Commissioner states that FOISA allows for a request to be made for recorded information and that "FOI only applies to recorded information. It won't, for example, cover someone's thoughts or opinions, unless they've been recorded in some way." I can confirm that I do not consider that the information you have requested is recorded information.

I note that in an effort to provide advice and assistance it was previously explained that the information on the COPFS website is aimed at providing an explanation of technical legal terms for the wide range of people who may access it and that it is not designed to provide legal advice to individuals or be a definitive statement on a complex legal concept such as corroboration. I can confirm that you were correctly advised in this regard and there is nothing I might usefully add to this explanation.

Under section 47(1) of FOISA if you remain dissatisfied with the outcome of this review you have the right to appeal to the Scottish Information Commissioner within six months of receiving this review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis. You also have a right of appeal to the Court of Session, on a point of law, on the Commissioner's decision.

You can contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

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Yours sincerely



G Connor
Response and Information Unit

