Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA
Response and Information Unit

Private and Confidential

Ms Sky Donaldson

request-216166-8f256c0c@whatdotheyknow.com

Tel: 0131 226 2626
RNID Typetalk prefix: 18001

Fax:

Your ref:
Our ref: R007881

11 July 2014

Dear Ms Donaldson

Thank you for your request dated 12 June 2014 under the Freedom of Information (Scotland) Act 2002 (FOISA) for the undernoted information:

"During the last year:

1) How many times you have received reports of offences contrary to Rent (Scotland) Act 1984 from either the police or other reporting agencies?

2) How many times you have raised criminal proceedings under the Rent (Scotland) Act 1984?

3) What were the reasons for not bringing proceedings in each case marked "no proceedings"?

4) What was the outcome of any case where proceedings were instituted, including those disposed of by way of a Fiscal fine?

Separately, has the COPFS produced any new guidance for prosecutors following the Scottish Government's actions in 2012 to "clarify" the legal position on premiums? If so, would it be possible to share this guidance?"

The Crown Office and Procurator Fiscal Service's case management database is a live, operating database. It is designed to meet this Department's business needs in relation to the processing of criminal cases, and the information within it is structured accordingly. We do not have a separate database, and hold only operational data needed for business purposes, ie to prepare court documentation; to send and receive electronic information regarding court appearances and results; to cite witnesses; to deal with issues relating to disclosure of information to the defence etc.

The information has been provided in respect of the number of charges reported to the Procurator Fiscal under the Rent (Scotland) Act 1984 and not the number of cases or

individuals. Please be aware that a number of the charges may relate to the same case/accused.

I can advise that in the financial year 2013/14, 35 charges contrary to the Rent (Scotland) Act 1984 were reported to the Procurator Fiscal.

Court Proceedings were raised in 14 of those charges, two were dealt with by direct meaures, no proceedings were taken in respect of 16 charges and no final decision has been taken in three of the charges.

In respect of the charges in which COPFS are not raising proceedings, the majority were due to insufficient admissible evidence. The full breakdown is undernoted:

Civil Remedy More Appropriate – 5
Insufficient Admissible Evidence – 9
Futher Action Disproportionate – 2

Of the charges in which court proceedings were raised, a conviction was obtained in one charge, a conviction was not obtained in one charge, nine charges are ongoing and proceedings were discontinued in one charge. Two charges were not a separate charge. This means that the charges were not prosecuted separately, but that details from these charges may have been included in other charges which were prosecuted for the same accused in the same case.

I can advise that in the financial year 2014/2015, up to and including 10 June 2014, five offences contrary to the Rent (Scotland) Act 1984 were reported to the Procurator Fiscal.

Court proceedings have been raised in respect of two of these charges and both are currently ongoing.

In one charge, no proceedings are being raised meantime due to insufficient admissible evidence.

No final decision has been made in respect of two of the charges.

For further information about the issues that the Procurator Fiscal must take into account when making a decision in respect of a criminal case which has been reported to them, you may wish refer to our prosecution code, which you can view at http://www.crownoffice.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412___1.pdf

In addition, specific guidance is available to prosecutors in relation to offences committed under the Rent (Scotland) Act 1984. However, I consider any such guidance to be exempt from disclosure in terms of Section 35(1)(a), (b) and (c) of FOISA. This section exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime; the apprehension or prosecution of offenders or the administration of justice. I am satisfied that the public interest in releasing this information is outweighed by the public interest in ensuring that offenders of such cases are brought to justice. In particular, I consider that there is a strong public interest in maintaining the confidentiaility of guidance to prosecutors in relation to particular types of offence.

If you are dissatisfied with the way in which your request has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please e-mail us at foi@copfs.gsi.gov.uk

The review will be undertaken by staff not involved in the original decision making process.

If our decision is unchanged following a review and you remain dissatisfied with this, please note that although generally under section 47(1) of FOISA there is a right of appeal to the Scottish Information Commissioner, where the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland, under section 48(c) no application can be made as respects a request for review made to the Lord Advocate. The information you have requested appears to fall into that category, although ultimately it would be for the Commissioner to decide whether that was the case should you refer the matter to her.

In circumstances where section 48(c) does not apply and the Commissioner accepts an appeal, should you subsequently wish to appeal against that decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

pp Joanne Munro
F SHAND
Response and Information Unit