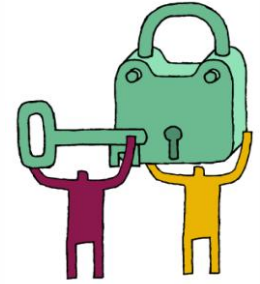


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Peculiarly Scottish: Appeals under FOISA

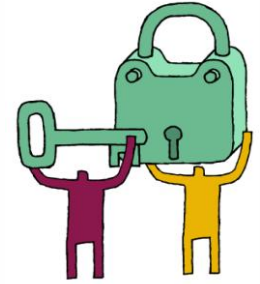
Christine O'Neill

18 October 2011



Overview

- **The Appeals Process**
- **Pros and Cons**
- **Third Party remedies**
- **Who wins?**



Anatomy of an Appeal

- FOISA – what it does and doesn't say.

- Section 56

An appeal, on a point of law, to the Court of Session may be made—

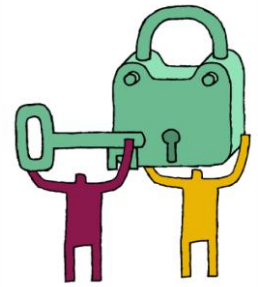
(a) against a decision by the Commissioner....., by the person who applied for that decision;

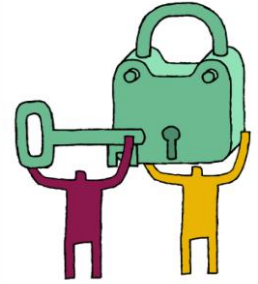
(b) against a decision by the Commissioner...—

(i) by that person; or

(ii) by the Scottish public authority in respect of which the decision was made;

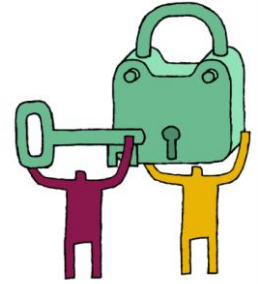
BRODIES^{LLP}





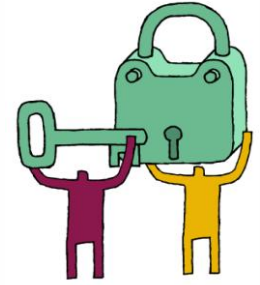
Anatomy of an Appeal

- Court of Session Rules on appeals under statute.
- New rules for appeals after 27 September 2011.
- Provide a default time limit of 42 days if no period prescribed.
- Order for service and answers and new provisions for timetabling
- Dealt with by Inner House of the Court of Session unless remitted to the Outer House.



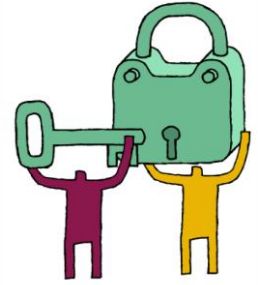
Anatomy of an Appeal

- Hearing may be fixed for several months after appeal lodged.
- Legal submissions only – leading to a ‘judicial review’ approach?
- Judgement...sometime
- Unpredictability of outcome
- Further appeal to Supreme Court only



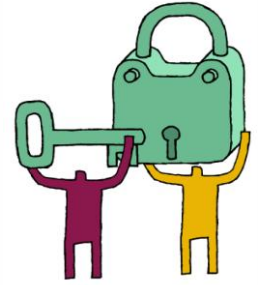
Pros

- Simplicity?
- Clarity?



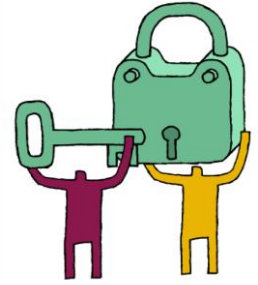
Cons

- Judicial expertise and experience
- Expense
- Delay
- A process unsuited to disputes about access to information?



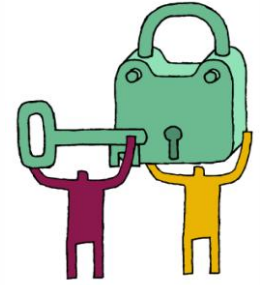
Third Party Remedies

- No provision in FOISA or in Rules of Court
- Judicial review of a decision of the Commissioner?
- Interdict to prevent the release of information?



And the winner is?

Scottish Information Commissioner
It's public knowledge



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