



PUBLIC PETITION NO.

PE01455

Name of petitioner

James Macfarlane

Petition title

Public access to court records

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to consider the need for new legislation to create a free of charge public right of access to information generated in relation to court proceedings, including all documents which have been read in open court, whether aloud or not, and to proactively publish this information online.

Action taken to resolve issues of concern before submitting the petition

I have previously attempted to obtain court documents by writing to a local sheriff court. However, this was refused, and I discovered that there is a Scottish Court Service policy against disclosing court documents to anyone other than parties or their legal representatives.

I believe that this policy is contrary to the common law of open justice and raised the issue with my constituency MSP who advised me to contact the Scottish Ministers to see if they intended to legislate in this area.

The response from the Scottish Ministers was that "In general terms, members of the public are only entitled to access civil case papers if they have an interest in the case. This usually means only the parties to the cause and their legal representatives. Any other person wishing access to civil papers should be directed to the solicitors for the parties".

As the Ministers indicated that they did not intend to change the law, I have decided to submit a petition to the Scottish Parliament.

Petition background information

In April 2012, the UK Court of Appeal (for England and Wales) ruled that the constitutional open justice principle entitles members of the public to obtain copies of documents submitted in court cases in *Guardian News and Media Ltd, R (on the application of) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420.

This is not the position taken in Scotland, where "only what is said in court is available to the public the written statements are not". I believe that the principle is universal and should apply equally to Scottish cases.

The High Court of Justiciary recently considered the issue of public access to court documents when the BBC asked to see photographs that were entered as Crown productions in the case *HMA v Hainey* [2010] HCJDV 10. Lord Woolman ruled that the photographs should be disclosed as they were “significant adminicles of evidence at the trial” that had been “effectively published in open court”.

I believe that petitioning courts for disclosure of documents is overly cumbersome, costly and therefore very off-putting to potential applicants. There should be an easier way to access documents, whereby anything produced in open court must be disclosed and parties must specifically apply at the time of producing any sensitive information for that information to be withheld from automatic disclosure.

The right of access should extend to documents produced in both criminal and civil matters. Members of the public are entitled to attend court for both types of hearing. However, it can be difficult - and at times impossible - for interested members of the public to attend court to follow the progress of a case, given their work, education and family commitments.

In the United States, there is a system called Public Access to Court Electronic Records (PACER, <http://www.pacer.gov/>) which allows anyone to access case information from the federal courts including transcripts, audio files of hearings, written submissions and rulings, making the system much more open.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/openjustice>

Related information for petition

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

YES

How many signatures have you collected so far?

1

Closing date for collecting signatures online

15 / 10 / 2012

Comments to stimulate online discussion

This petition seeks to create a public right of access to any document produced before a court (in the course of any proceedings, either criminal or civil).

The 'open justice' principle entitles any member of the public to watch court proceedings; however, it isn't easy for members of the public to follow a case - they will have to attend court on numerous days and may have to take time off from work. If this is the case, then the justice system isn't really 'open' at all.

I propose that all court documents are published online for all to see. If a party wants information to remain confidential - and it wouldn't ordinarily be read out in open court - then the sheriff / judge/ JP can withhold it from disclosure.

