



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 6

DISCLOSURE

Court rulings on disclosure: appellate proceedings

139 Application by appellant for ruling on disclosure

- (1) This section applies where the appellant—
 - (a) has made a further disclosure request under section 135, and
 - (b) considers that the prosecutor has failed, in responding to the request, to disclose to the appellant an item of information falling within section 133(3) (the “information in question”).
- (2) The appellant may apply to the court for a ruling on whether the information in question falls within section 133(3).
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question, and
 - (c) the appellant’s grounds for considering that the information in question falls within section 133(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 133(3).

- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.
- (7) On determining the application, the court must—
 - (a) make a ruling on whether the information in question, or any part of the information in question, falls within section 133(3), and
 - (b) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) In this section, “the court” means the court before which the appellant’s appeal is brought.
- (9) Except where it is impracticable to do so, the application is to be assigned to the judges who are to hear the appellant’s appeal.

140 Review of ruling under section 139

- (1) This section applies where—
 - (a) the court has made a ruling under section 139 that an item of information (the “information in question”) does not fall within section 133(3), and
 - (b) during the relevant period—
 - (i) the appellant becomes aware of information (“secondary information”) that was unavailable to the court at the time it made its ruling, and
 - (ii) the appellant considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section 133(3).
- (2) The appellant may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question and the secondary information, and
 - (c) the appellant’s grounds for considering that the information in question falls within section 133(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 133(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
 - (a) affirm the ruling being reviewed, or
 - (b) recall that ruling and—

- (i) make a ruling that the information in question, or any part of the information in question, falls within section 133(3), and
 - (ii) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the judges who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to an appellant, means the period—
 - (a) beginning with the making of the ruling being reviewed, and
 - (b) ending with the relevant conclusion.
- (11) In subsection (10), “relevant conclusion” has the meaning given by section 134(5).