

# Decision Notice



Decision 135/2013 Mr X and the Scottish Prison Service

Internal guidance

Reference No: 201300967  
Decision Date: 10 July 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
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## Summary

On 2 January 2013, Mr X asked the Scottish Prison Service (the SPS) for any guidance it held regarding a specified policy. The SPS informed Mr X that it did not hold the requested information.

Following an investigation, the Commissioner accepted that the SPS did not hold the information in question and that it had dealt with Mr X's request for information in accordance with Part 1 of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 2 January 2013, Mr X wrote to the SPS in relation to Governors and Managers Action Note 3A/12 (GMA 3A/12). Mr X asked for any guidance the SPS held regarding the interpretation of GMA 3A/12 at HMP Glenochil which was issued, or in force, during 2012.
2. The SPS responded on 30 January 2013, stating that it did not hold the information.
3. On 1 February 2013, Mr X wrote to the SPS requesting a review of its decision. Mr X stated that he believed the SPS did hold the requested information. Mr X referred to a letter he had received from an SPS employee at HMP Glenochil which suggested (to Mr X) that the information was held.
4. The SPS notified Mr X of the outcome of its review on 27 February 2013, upholding its original decision without modification.
5. On 18 April 2013, Mr X wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



6. The application was validated by establishing that Mr X had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. The investigating officer subsequently contacted the SPS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The SPS was asked to explain the steps it had taken to establish that it did not hold the information and to describe the searches that it had carried out.
8. The SPS responded on 7 June 2013, providing submissions in support of its position that it did not hold any relevant information.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr X and the SPS. She is satisfied that no matter of relevance has been overlooked.

### Section 17 of FOISA – information not held

10. Under section 17(1) of FOISA, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
11. As noted above, in its initial response to Mr X and in its response to his requirement for review, the SPS informed Mr X that it did not hold the information that he was seeking.
12. In his application to the Commissioner, Mr X pointed out that he had previously been informed in writing by a member of staff at HMP Glenochil that guidance had been sought from SPS Legal Services regarding the subject of his request. In Mr X's view, it was inconceivable that the guidance sought and received was both verbal and unrecorded. Mr X also considered it inconceivable that the source of the guidance from SPS Headquarters would have failed to record it.
13. The SPS explained that it had undertaken a search of the SPS Prison Resource Library, a Microsoft Sharepoint site which is a document repository. Additionally, the policy lead at the SPS was contacted in order to seek their views as to whether guidance had been issued; if it had, they would most likely have been the person to prepare and issue it.



14. The SPS also explained that employees' notebooks and emails were included in the search for relevant information, but that no relevant information was located. The SPS stated that the individuals who had sought and received the guidance referred to by Mr X did recollect their discussion. However, both individuals had checked their notebooks and emails and no information had been found which fell within the scope of the request.
15. The Commissioner notes that her remit in carrying out this investigation extends to the consideration of whether the SPS actually holds the information requested by Mr X. She cannot comment on whether a public authority ought to have recorded any information about a particular event or procedure. Consequently, in this instance, she cannot comment on whether the SPS ought to have created and kept any recorded version of the guidance to which it referred in previous correspondence with Mr X.
16. The Commissioner has considered the SPS's submissions and its explanation of why it does not hold the information sought by Mr X. The Commissioner is satisfied that the SPS has conducted proportionate searches to establish whether it holds any relevant information.
17. The Commissioner is therefore satisfied that the SPS was correct to give Mr X notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

## DECISION

The Commissioner finds that the Scottish Prison Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr X.



## Appeal

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Should either Mr X or the Scottish Prison Service wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**  
**10 July 2013**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- ...