

Decision Notice



Decision 057/2014 Mr X and the Scottish Prison Service

Prison visit booking arrangements

Reference No: 201302892
Decision Date: 5 March 2014

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Scottish Information Commissioner

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Summary

On 28 September 2013, Mr X asked the Scottish Prison Service (the SPS) for information relating to a review of prison visit booking arrangements. Mr X did not get a response to his request so he asked for a review. The SPS responded by confirming that it held no information falling within the scope of the request.

During the Commissioner's investigation, the SPS found some information and provided it to Mr X. Mr X confirmed that this was the information he was seeking.

The Commissioner found that the SPS failed to disclose all relevant information it held when responding to Mr X. She also found that the SPS failed to respond to Mr X's request within the required timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance)

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

1. On 28 September 2013, Mr X submitted a complaint form to the SPS. Within the complaint form, Mr X made a request for information in the following terms:
I invite the Governor to provide me with all and any information held by the SPS relative to the review of visit booking arrangements recommended in response to PCF1 complaint EH/130624/1442 since 1 July 2013.
2. On 2 October 2013, the SPS responded to the complaint made by Mr X but not to the information request.
3. On 4 November 2013, Mr X wrote to the SPS, requesting a review of its failure to respond.



4. The SPS notified Mr X of the outcome of its review on 25 November 2013. It apologised for not responding to his request initially. The SPS stated that could find no information falling within the scope of the request.
5. On 5 December 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 made a request for information to a Scottish public authority and 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

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. In particular, the SPS was asked to describe the steps taken to identify and locate the information requested.
8. On 17 January 2013, the SPS responded with submissions. It informed the investigating officer that it had uncovered some emails during the investigation. It considered these to fall within the scope of Mr X's request and confirmed that they would be supplied to him.
9. Mr X contacted the Commissioner on 23 January 2013 to confirm that he had received the emails from the SPS. He also confirmed that this was the information he was looking for.

Commissioner's analysis and findings

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

Section 1(1) of FOISA

11. The Commissioner has considered the information provided to Mr X during the investigation and agrees that it falls within the scope of his request. Mr X acknowledged that this was the information he was seeking
12. The SPS did not identify this information until after the investigation started. In the circumstances, the Commissioner must find that the SPS breached the requirements of



section 1(1) of FOISA in responding to Mr X's request, by failing to supply all the information it held and which fell within the scope of the request.

Section 10(1) of FOISA

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
14. The SPS issued a review response to Mr X on 25 November 2013, in which it apologised for failing to identify, and therefore respond to, his request within the time limit set down by section 10(1).
15. Since the SPS did not provide a response to Mr X's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
16. In the circumstances, the Commissioner does not require the SPS to take any further action in response to this breach. In *Decision 256/2013 Mr G and the SPS*, she reminded the SPS of the importance of being able to identify requests within other correspondence (particularly complaints). She asked the authority to take steps to address its practice in this area. She is satisfied these steps have been taken and notes that this decision relates to the practice of the authority before it was asked to take this action.
17. Also in *Decision 256/2013*, the Commissioner reminded requesters of the benefits of keeping information requests separate from other correspondence. She would reiterate that reminder here.

DECISION

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

She finds that the SPS breached the requirements of section 1(1) of FOISA by failing to supply information it held and which fell within the scope of the request. Additionally, she finds that in failing to provide a response to Mr X's request within 20 working days, the SPS breached section 10(1) of FOISA.

In all the circumstances, the Commissioner does not require the SPS to take any action in respect of these failures, in response to Mr X's application.



Appeal

Should either Mr X or the Scottish Prison Service wish to appeal against this decision, they have the right to 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.

Rosemary Agnew
Scottish Information Commissioner
05 March 2014



Appendix

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.
- ...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- ...