

Decision Notice



Decision 082/2014 Mr Y and the Scottish Prison Service

Retention of CCTV camera footage and details of cell searches

Reference No: 201302933
Decision Date: 14 April 2014

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 23 September 2013, Mr Y asked the Scottish Prison Service (the SPS) how long CCTV footage from hall cameras was kept and how many officers were present at two cell searches on a particular date. The SPS provided some information to Mr Y. Following a review, Mr Y was not satisfied that all the information he requested had been provided and he applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had failed to deal with Mr Y's request for information in accordance with Part 1 of FOISA, by failing to provide recorded information covered by the terms of his request. She also found that the SPS had failed to provide reasonable advice and assistance as required by section 15 of FOISA, and had provided incorrect information in relation to Mr Y's second request. Given the explanations set out in this decision, she did not require the SPS to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections (1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance)

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 23 September 2013, Mr Y wrote to the SPS to ask:
 - i. how long security footage from hall cameras was kept; and
 - ii. how many prison officers, supervisors, managers and unit managers were present at two cell searches which took place on a specified date.
2. The SPS responded on 23 October 2013. It explained that CCTV footage is continually overwritten in an automated process, the speed of which depends on the volume of traffic on the particular camera. In relation to Mr Y's second request, it stated that there were three prisoner officers and one "hall First Line Manager" present at each of the two searches.



3. Mr Y wrote to the SPS requesting a review of its decision. His letter was undated, but the SPS wrote to Mr Y confirming receipt on 30 October 2013. Mr Y complained that he had not been provided with a timescale for the overwriting of footage from the cameras in the Halls. He also queried the accuracy of the information he had received about the staff present at two cell searches.
4. The SPS notified Mr Y of the outcome of its review on 16 November 2013. The SPS confirmed its response without modification or further advice.
5. On 9 December 2013, Mr Y 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 Y 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. On 31 January 2014, the SPS was notified in writing that an application had been received from Mr Y, 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.
8. The submissions from the SPS highlighted points regarding the CCTV timings and the documentation held about the cell searches. During the investigation, the SPS provided Mr Y with an extract from its CCTV policy which set out retention periods for CCTV footage. It also provided him with an extract from the cell search records, and gave some additional explanation relating to this information.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Y and the SPS. She is satisfied that no matter of relevance has been overlooked.
10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.



11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. The question for the Commissioner, therefore, is whether she is satisfied that the SPS identified and located all of the information it held and which fell within the scope of Mr Y's request.

Request 1 – CCTV footage

12. In Mr Y's requirement for review and his application to the Commissioner, he complained that the SPS's explanation of the CCTV camera operation gave no indication of the timescales when footage would be overwritten. He did not consider that the information provided by the SPS had fully addressed the first part of his request.
13. During the investigation, the SPS supplied an extract of its CCTV policy to the investigating officer and to Mr Y. The policy states that there is no requirement to keep footage for any longer than fourteen days unless such footage is required for evidential purposes. This indicates the likely retention period which would apply to the footage from the Hall cameras.
14. Having taken account of the submissions from both the SPS and Mr Y, the Commissioner is satisfied that all the information which is held in respect of part 1 of Mr Y's request has now been supplied to him. That said, it is clear that the extract from the CCTV policy fell within the scope of Mr Y's request and should have been supplied to Mr Y at the time of his initial request and his requirement for review.
15. Consequently, the Commissioner finds that the SPS failed to comply with section 1(1) of FOISA when responding as it failed to provide information which it held and which was covered by Mr Y's request.

Section 15 – Duty to advise and assist

16. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
17. The SPS acknowledged during the investigation that its handling could have been better in terms of the advice it gave in relation to part 1 of Mr Y's request. The SPS recognised that it failed to explain that it held a policy for CCTV cameras which, while it did not provide an exact response to Mr Y's request, explained what the retention period for CCTV footage from the Hall cameras was likely to have been.
18. The Commissioner takes the view that it would have been helpful for the SPS to confirm to Mr Y that it did not hold information showing exactly how long the footage from the Hall cameras was kept, and to direct him to its CCTV policy for an explanation of its general practice in this area.
19. For the above reason, the Commissioner finds that the SPS failed to provide Mr Y with reasonable advice and assistance in respect of the first part of his request, and in doing so, failed to comply with section 15 of FOISA.



20. Given the explanations which the SPS provided Mr Y during this investigation, the Commissioner is satisfied that he is now fully aware of the information relevant to his request. The Commissioner does not require the SPS to give any further advice or assistance to Mr Y.

Part 2 of the request – Cell Searches

21. During the investigation, the SPS sent Mr Y a redacted copy of the relevant part of the log for cell searches. The investigating officer was also provided with unredacted copies of the records held.
22. The log records that there was only one search (not two), conducted by two officers (not three), as previously indicated to Mr Y. The SPS commented that there were other staff present within the hall who were not involved in the searches.
23. The Commissioner is satisfied that Mr Y has now received the information covered by the second part of his request. She notes that the SPS provided misleading and inaccurate information when responding to Mr Y's second request and request for review, and failed to identify and disclose recorded information which would have provided an accurate answer to his request.
24. Consequently, the Commissioner finds that, in dealing with the second part of Mr Y's request, the SPS failed to comply with section 1(1) of FOISA.

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 Y.

The Commissioner finds that the SPS failed to release all of the information it held which fell within the scope of part 1 of Mr Y's request, as required by section 1(1) of FOISA. In relation to the second part of his request, the SPS failed to provide recorded information covered by the request and instead provided inaccurate and misleading information, again failing to comply with section 1(1) of FOISA.

The Commissioner finds that the SPS failed to provide Mr Y with reasonable advice and assistance in relation to the first part of his request, and in doing so, failed to comply with section 15(1) of FOISA.

Given the information and explanations provided to Mr Y during the investigation and set out in this decision notice, the Commissioner does not require the SPS to take any further action in respect of these failures.



Appeal

Should either Mr Y 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.

Margaret Keyse
Head of Enforcement
14 April 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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

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