

# Decision Notice

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## Decision 098/2017: Mr P and the Scottish Prison Service

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**“Legal” or “privileged” correspondence to prisoners: failure to respond within statutory timescales**

Reference No: 201700882

Decision Date: 22 June 2017



Scottish Information  
Commissioner

## Summary

The Scottish Prison Service (the SPS) was asked for information about the handling of “legal” or “privileged” correspondence sent to prisoners in HM Prison Edinburgh, including a purported requirement to explain the nature of the correspondence.

This decision finds that the SPS failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

## Background

Date	Action
30 January 2017	Mr P made an information request to the SPS.
20 February 2017	The SPS responded to the information request.
3 March 2017	Mr P wrote to the SPS, requiring a review of its decision.
	Mr P did not receive a response to his requirement for review.
11 May 2017	Mr P wrote to the Commissioner’s Office, stating that he was dissatisfied with the SPS’s failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
31 May 2017	The SPS was notified in writing that an application had been received from Mr P and was invited to comment on the application.
8 and 9 June 2017	The Commissioner received submissions from the SPS. These submissions are considered below.

## Commissioner’s analysis and findings

1. When contacted by the Commissioner, the SPS confirmed that it had failed to comply with Mr P’s requirement for review. It explained that Mr P’s letter was received at SPS headquarters and forwarded to HMP Edinburgh to carry out the review. It also explained how the letter had been placed among other correspondence and not brought to the attention of the reviewer as promptly as it should have been.
2. To avoid this happening again, the SPS confirmed that the FOI lead officer at the prison had instructed administration staff to ensure that such correspondence is brought to the lead officer’s attention on receipt.
3. The SPS also notified the Commissioner that a review outcome was issued to Mr P on 7 June 2017. A copy was provided to the Commissioner on 8 June 2017.
4. Mr P expressed concern that the review outcome did not explain the nature of the administrative error, which might be symptomatic of systemic failure requiring further action. The issue might have been explained in a more informative manner, but the Commissioner is

satisfied in the circumstances that the remedial actions taken by the SPS were adequate and proportionate, given what appears to have been an example of straightforward human error.

5. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case
6. It is a matter of fact that the Scottish Prison Service did not provide a response to Mr P's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The SPS issued an apology when it responded to Mr P's requirement for review on 7 June 2017. The Commissioner does not require it to take any further action in relation to Mr P's application.

## Decision

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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 P. In particular, the SPS failed to respond to Mr P's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of this failure, in response to Mr P's application, given that a response has now been issued.

## Appeal

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Should either Mr P 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**22 June 2017**

**Scottish Information Commissioner**

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