

Decision Notice

Decision 054/2018: Mr Colin Malaney and the Scottish Prison Service

Internal briefings: failure to respond within statutory timescales

Reference No: 201800443

Decision Date: 16 April 2018



Scottish Information
Commissioner

Summary

The Scottish Prison Service (the SPS) was asked for information about internal briefings prepared for Government Ministers.

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) by FOISA.

Background

Date	Action
17 October 2017	Mr Malaney made an information request to the SPS.
20 November 2017	The SPS responded to the information request.
20 November 2017	Mr Malaney wrote to the SPS, requiring a review of its decision.
	Mr Malaney did not receive a response to his requirement for review.
8 March 2018	Mr Malaney 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.
9 April 2018	The SPS was notified in writing that an application had been received from Mr Malaney and was invited to comment on the application.
10 April 2018	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 Malaney's requirement for review within the timescale allowed by FOISA. It explained that there were a number of reasons for this, including staff absence and an administrative oversight. It apologised for this failure, confirming that it had provided Mr Malaney with a review outcome on 28 March 2018.
2. Mr Malaney confirmed he had received the review outcome.
3. 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.
4. It is a matter of fact that the SPS did not provide a response to Mr Malaney's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. The SPS issued an apology when it responded to Mr Malaney's requirement for review on 28 March 2018. The Commissioner does not require it any further action in relation to Mr Malaney's application.

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 Malaney. In particular, the SPS failed to respond to Mr Malaney'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 Malaney's application, given that a review outcome has now been issued.

Appeal

Should either Mr Malaney or the SPS 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

16 April 2018

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