



# Decision Notice 118/2022

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## Recorded statements allegedly made by HM Chief Inspector of Prisons - failure to respond

**Applicant:** The Applicant

**Authority:** His Majesty's Chief Inspector of Prisons for Scotland

**Case Ref:** 202200614

### Summary

The Applicant asked the Authority for information about recorded statements, on three specified topics, allegedly made by HM Chief Inspector of Prisons during the period 2 March 2019 to 2 March 2022.

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

### Background

1. The Applicant made an information request to the Authority on 2 March 2022.
2. The Authority responded to the information request on 11 March 2022.
3. On 26 April 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. On 27 May 2022, the Applicant wrote to the Commissioner, stating that she was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

## **Investigation**

7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Commissioner did this on 2 August 2022.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority initially explained that the intended email recipient had no record of receiving the request for review. In light of this, it had instructed its IT team to conduct searches to determine if the email had, in fact, been received.
10. Following notification of the appeal to the Commissioner, the Authority issued a review response on 3 August 2022. It advised the Applicant that it had no record of having received the request for review and apologised for the delay in responding.
11. On 31 August 2022, the Authority confirmed that the request for review was received by its email network but could offer no further explanation for its failure to deliver to the intended recipient.
12. 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.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. The Authority responded to the Applicant's requirement for review on 3 August 2022, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, the Commissioner does not require the Authority to take any action.

## **Appeal**

Should either the Applicant or the Authority 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.

**Wendy Snedden**  
**Freedom of Information Officer**

**3 November 2022**