



Scottish Information
Commissioner
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Decision Notice 028/2025

Email a prisoner service

Authority: Scottish Prison Service
Case Ref: 202300056

Summary

The Applicant asked the Authority for information relating to the Email a Prisoner (EMAP) scheme. The Authority said it did not hold the information. The Commissioner investigated and found that the Authority had breached FOISA in responding to the request because it had wrongly informed the Applicant it did not hold the information.

Given that the Authority disclosed the information to the Applicant during the investigation the Commissioner did not require further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 2 September 2022, the Applicant made a request for information to the Authority. He asked for:
 - (i) all information held concerning the technical and organisational measures taken in relation to its processing of EMAP messages; and

- (ii) All information held in respect of remuneration levels and arrangements with Unilink [the EMAP service provider] in respect of the EMAP service effective since 1 January 2021.
- 2. The Authority failed to respond to the request.
- 3. On 28 October 2022, the Applicant wrote to the Authority requesting a review of its failure to respond.
- 4. Following an investigation by the Commissioner, which resulted in Decision [001/2023](#)¹, the Authority notified the Applicant of the outcome of its review on 20 December 2022. It apologised for its failure to respond to the Applicant's request and requirement for review and stated that it was investigating this failure. It also informed the Applicant that it did not hold the information he requested.
- 5. On 11 January 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not accept that the information was not held.

Investigation

- 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.
- 7. On 13 January 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
- 8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

- 9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 17(1) – Notice that information is not held

- 10. In its review outcome, the Authority stated that it did not hold any of the information requested by the Applicant.
- 11. In considering whether a Scottish public authority holds the requested information in any given case, or further requested information, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances. He will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.

¹ <https://www.foi.scot/decision-0012023>

12. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).

Information identified and disclosed during the investigation

13. During the Commissioner's investigation, the Authority carried out new searches and located information that fell within the scope of request (i). This information was contained within its Management of Prisoner Correspondence Guidance and its Protecting the Personal Data of Individuals Held in Custody Policy and Guidance (which held information relating to personal data contained within emails).
14. The Authority disclosed this information to the Applicant and apologised for not providing it sooner.
15. The Commissioner has considered the wording of the request, along with the information identified and disclosed by the Authority, and he is satisfied that this information falls within the scope of request (i). In the circumstances, the Commissioner must find that the Authority was not entitled to give the Applicant notice, under section 17(1) of FOISA, that it did not hold any information falling within the scope of request (i).

The Applicant's comments

16. The Applicant argued that the Authority was party to arrangements for the processing of EMAP messages and provided an example by way of demonstrating the working of this agreed process. The Applicant stated that, should the sender of an EMAP message simply direct it to the Governor or an administrator asking that it be forwarded to a prisoner, this would be refused. The Applicant argued that this meant it was clear that there were arrangements in place between the Authority and Unilink (with regard to the operation of the scheme) and that it was disingenuous to suggest otherwise.
17. The Applicant added that the Authority had previously provided information in response to a Subject Access Request which pointed to the existence of such arrangements. Furthermore, he argued that while the Authority had referred to users of the EMAP service entering into a contract with Unilink, this did not preclude separate arrangements between the Authority and Unilink (and he stated that the prisoner using the service had not in any case been party to the terms and conditions accepted by the sender of emails).
18. In relation to request (i) the Applicant accepted that the information disclosed to him during the investigation may have satisfied the request, but he contended that he had not seen all the information held by the Authority.
19. In relation to request (ii) the Applicant did not accept that the information was not held. He suggested that the Authority was in receipt of remuneration from Unilink in respect of its arrangements regarding the service but acknowledged that he had no evidence to support that view.
20. The Applicant stated that he wanted the Commissioner to issue a decision because the Authority had deliberately withheld information falling within scope of the request for more than two years.

The Authority's comments

21. The Authority provided information about how the EMAP scheme worked.

It explained that an email sent to a prisoner via Unilink was delivered to a dedicated PC within the particular establishment's mail room. The mail-room manager would print the email and seal it in an envelope for distribution to the recipient. If the sender required a response, Unilink would charge a fee. This generated a blank A4 sheet with a bar code header for the prisoner to write their response. This response was then returned to the mail room in the envelope for the mail room manager to scan and return to Unilink, which in turn directed it to the intended recipient.

22. In its comments on request (i), the Authority stated that it held no information regarding the operational procedures staff should follow in the scenario described by the prisoner in paragraph 16 (i.e. where an email was sent to another member of staff) other than the management of Prison Correspondence Guidance (the relevant sections of which had since been disclosed to the Applicant). The Authority explained that it had contacted other establishments to ask why no guidance was in place and it noted that it appeared the process which was in place was carried out as part of the daily mail routine.
23. The Authority argued that, as per the Protecting the Personal Data of Individuals Held in Custody Police and Guidance, it fully understood its obligations in relation to individuals' personal data and it submitted that the policy and guidance explained how it discharged this responsibility.
24. In relation to request (ii) the Authority maintained that it held no information. It argued that remuneration levels and arrangements relating to the EMAP service were matters for Unilink and service users. The Authority explained that its operational undertaking was to facilitate the service by allocating an email address where emails could be sent to or from. It stated that it did not charge for this and that payment for the service was made directly by the user to Unilink at the point of use.
25. The Authority stated that it was not involved in the charging arrangements of Unilink and therefore held no information in relation to request (ii). It commented that its finance department stated that no information was held in respect of remuneration arrangements with Unilink and that there were no remuneration arrangements in place between the Authority and Unilink with regard to the service. The Authority also provided a link to the EMAP website which stated that the service was free to prisoners and establishments.

The Commissioner's views

26. In relation to request (i), the Commissioner has carefully considered the evidence and information provided by the Authority of and about searches carried out during the investigation. As detailed above, the Commissioner has already found that the Authority did not comply with Part 1 of FOISA, in its handling of request (i), as it failed to disclose information falling within the scope of the request and wrongly notified the Applicant that the information was not held.
27. Taking into account the submissions and evidence of searches provided by the Authority during his investigation, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold any other information falling within the scope of request (i).
28. In relation to request (ii), the Commissioner has fully considered the submissions by the Applicant and the Authority, and he is satisfied, on balance, that no remuneration arrangement exists between the Authority and the service provider and that no information relating to remuneration is therefore held (or was held, on receipt of the request).

The Commissioner considers that the Authority has carried out proportionate and adequate searches and that no further information is or was held.

Decision

The Commissioner finds that the Authority partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority complied with Part 1 of FOISA, as it correctly gave the Applicant notice, under section 17(1) of FOISA, that it did not hold any information falling within the scope of request (ii).

However, he finds that the Authority failed to comply with Part 1 of FOISA by wrongly notifying the Applicant, under section 17(1) of FOISA, that it held no information falling within the scope of request (i).

Given that information falling within the scope of request (i) has now been located and disclosed to the Applicant, and that the Commissioner is satisfied, on balance, that no further information is held, he does not require the Authority to take any action in response to this failure.

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.

Euan McCulloch
Head of Enforcement

10 February 2025