

Decision Notice

Decision 002/2016: Mr Mark Howarth and the Scottish Ministers

Prisoners released on compassionate grounds

Reference No: 201501713

Decision Date: 6 January 2016



Scottish Information
Commissioner

Summary

On 8 June 2015, Mr Howarth asked the Scottish Ministers (the Ministers) for information concerning prisoners released on compassionate grounds.

The Scottish Prison Service (the SPS) responded on behalf of the Ministers.

Mr Howarth sought a review from the Ministers, arguing that he should have received a response from them rather than the SPS. The SPS again responded on behalf of the Ministers. Mr Howarth applied to the Commissioner for a decision as to whether the Ministers had been entitled to pass the request to the SPS.

The Commissioner investigated and found that the Ministers were entitled to pass the request to the SPS for response. This SPS is an Executive Agency of the Ministers and part of the same public authority for the purposes of FOISA. Accordingly, the Ministers complied with Part 1 of FOISA in responding to the request.

Although the Commissioner upheld the Ministers' actions in relation to the specific matter raised in the application, she has set out (apart from her decision) her observations about the Ministers' handling of the initial request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 8 June 2015, Mr Howarth made a request for information to the Ministers. The request was for a range of information relating to prisoners released on compassionate grounds since 2010, under section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act).
2. The SPS responded on behalf of the Ministers on 6 July 2015. The SPS informed Mr Howarth that, in terms of section 12(1) of FOISA, it was not obliged to comply with his request as the cost of doing so would exceed the upper cost limit of £600. The SPS also informed Mr Howarth that information on compassionate release was published on the Scottish Government website and provided a link to the relevant page¹.
3. On 7 July 2015, Mr Howarth emailed the Ministers requesting a review of their decision. Mr Howarth stated that he believed the information was held by the Scottish Government, on the basis that decisions to release prisoners were made by the Ministers and not the SPS. Mr Howarth also asked the Ministers to confirm that the information contained in the weblink was up to date.

¹ <http://www.gov.scot/Topics/archive/law-order/offender-management/offender/custody/Prisons/17968/granted-refused/granted2000-09>

4. The SPS wrote to Mr Howarth on 4 August 2015. The SPS informed him that it did not consider his requirement for review to be valid. In the SPS's view, Mr Howarth had not specified why he was dissatisfied with its response.
5. On 21 September 2015, Mr Howarth wrote to the Commissioner. Mr Howarth applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Howarth stated he was dissatisfied with the outcome of the review because, in his view, the Ministers (as opposed to the SPS) had not responded at all to either his information request or his requirement for review. His impression was that the SPS had responded to his request as a separate entity.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Howarth made a request for information to a Scottish public authority (the Ministers) and asked the authority to review their response to that request before applying to her for a decision. He had provided a valid reason for seeking a review: in his view, the Ministers (as opposed to the SPS) had not responded to his request.
7. On 5 October 2015, the Ministers were notified in writing that Mr Howarth had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions, referring to the issues raised by Mr Howarth in his application.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Howarth and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Whether the SPS was entitled to respond on behalf of the Ministers

10. As noted above, in his application to the Commissioner, Mr Howarth expressed dissatisfaction that the SPS had responded to his request and requirement for review. In Mr Howarth's view, the information was clearly held by the Ministers rather than the SPS as decisions on compassionate release were made by the Ministers under the 1993 Act, not by the SPS.
11. The Ministers submitted that they and the SPS were part of one Scottish public authority for the purposes of FOISA. The SPS was one of their Executive Agencies. In their view, they were free to pass any FOI request received to the team best placed to answer it, including teams within Executive Agencies such as the SPS.
12. In this case, the Commissioner can understand Mr Howarth's perception that the response to his request and requirement for review had been issued by a different entity from that to which he made his request. However, the Commissioner accepts that the SPS is an Executive Agency of the Ministers: it has no separate legal status of its own. As such, it is part of the Ministers for the purposes of FOISA: there is no other basis on which it can be covered by FOISA.

13. In the circumstances, the Ministers were entitled to pass Mr Howarth's request to the SPS in order to respond to the request and requirement for review. To that extent, the Commissioner finds that the Ministers complied with the requirements of Part 1 of FOISA in responding to Mr Howarth's request.

The Commissioner's observations about the handling of the request

14. The following observations are not part of the Commissioner's findings on compliance with FOISA in this case, but cover practice issues she has identified during this investigation about which she has concerns.
15. The Ministers stated that, in responding to the request, the SPS checked only their own prisoner records database as this was the only place which was considered to hold the information centrally. However, the information on prisoner releases found on the Scottish Government website was collated and published by their Parole Unit. The Ministers also acknowledged that the information on the website had not been updated for a while prior to Mr Howarth's request, and that the SPS ought to have worked more closely with the Parole Unit in checking this and responding to the request more generally.
16. The Ministers confirmed that they had updated the information on the website, and had written to Mr Howarth to let him know this and to apologise for the error in the original response. They also acknowledged that the cost limit should not have been applied to the request: this was an error.
17. The Commissioner is pleased to note this updated response. It remains of concern to her, however, that the original response could not be said to be a fully co-ordinated one on behalf of the Ministers as a whole. In addition, it is difficult to understand (given that this was a response on behalf of the Ministers as a whole and not just the SPS) how the application of the cost limit could be reconciled with the provision of a link to a relatively comprehensive (albeit slightly out of date) set of relevant information.
18. In all the circumstances, therefore, the Commissioner considers the handling of his request fell short of good practice. She would urge the Ministers to reflect on these points, with a view to ensuring that future responses represent (where appropriate) the fully co-ordinated position of the Scottish Government.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Scottish Ministers (the Ministers) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Howarth. The Commissioner accepts that the Ministers were entitled to pass the request to the Scottish Prison Service in order to respond to Mr Howarth's request.

Appeal

Should either Mr Howarth or the Scottish Ministers 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

6 January 2016

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.

...

(6) This section is subject to sections 2, 9, 12 and 14.

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