

# Decision Notice



Decision 004/2014 Mr X and the Scottish Parliamentary Corporate Body

Standards for correspondence

Reference No: 201302421

Decision Date: 13 January 2014

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## Summary

On 13 September 2013, Mr X asked the Scottish Parliamentary Corporate Body (the SPCB) for information about the standards which apply when MSPs respond to correspondence. The SPCB provided information to Mr X, but Mr X was dissatisfied and requested a review under FOISA.

Following an investigation, the Commissioner concluded the SPCB partially failed to deal with Mr X's request for information in accordance with Part 1 of FOISA, by failing to deal with his request for review as required by section 21 of FOISA. On this occasion, she did not require the SPCB to take any action as it had provided all the relevant information it held.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 19 (Content of certain notices); 20(1) and (3) (Requirement for review of refusal etc.); 21(1), (4) and (10) (Review by a Scottish public authority)

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

## Background

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1. On 13 September 2013, Mr X requested from the SPCB “all and any information held by the Scottish Parliament (Corporate Body) in relation to standards which may apply to the provision of written replies by Members of the Scottish Parliament.”
2. The SPCB responded to it as a general enquiry on 19 September 2013. It disclosed information taken from the Code of Conduct for Members of the Scottish Parliament (the Code of Conduct) relating to engagement and liaison with constituents.
3. On 25 September 2013, Mr X wrote to the SPCB regarding the information disclosed to him. He queried if there was more information held specifically about correspondence with prisoners. Mr X also requested that the SPCB proceed under FOISA and treat his letter as a request for a review.



4. The SPCB responded to Mr X on 3 October 2013, informing him that it was treating his letter of 25 September 2013 as a general enquiry. It provided clarification to Mr X about how the information he had previously received from the Code of Conduct might relate to prisoners.
5. On 11 October 2013, Mr X wrote to the Commissioner, stating that he was dissatisfied that the SPCB had not handled his request and request for review under FOISA, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr X made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. The investigating officer contacted the SPCB on 4 November 2013, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The SPCB was asked to confirm whether Mr X's request for review was handled as a general review rather than as a review under FOISA. It was also asked to provide submissions on its handling of Mr X's request for review.
8. The SPCB responded on 14 November 2013.

## Commissioner's analysis and findings

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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 X and the SPCB. She is satisfied that no matter of relevance has been overlooked.

### Section 1(1) General requirement

10. Where an applicant requests recorded information, the public authority must either disclose the information or provide the applicant with a notice explaining why it is not providing the information.
11. In this case, the SPCB followed its general enquiries process throughout its correspondence with Mr X. It provided Mr X with information about MSPs' correspondence with constituents in its initial response of 19 September 2013, and then provided further clarification relating to that information in its letter of 3 October 2013.



12. During the investigation, the SPCB confirmed that it did not hold any further information in relation to Mr X's request, and that the outcome would not have been different if the request had been dealt with as a freedom of information request. It confirmed that there is no guidance for MSPs on their dealings with the public apart from the part of the Code of Conduct supplied to Mr X.
13. After investigation, the Commissioner is satisfied that the SPCB provided Mr X with all the information it held in relation to the provision of written replies by MSPs and finds that, in doing so, it complied with section 1(1) of FOISA.

### **Failure to advise Mr X of his rights**

14. Mr X expressed dissatisfaction that he was not given advice on his rights to seek a review and appeal to the Commissioner under FOISA.
15. Where an authority does not provide information which has been requested, there is a requirement to issue a notice under section 16, 17 or 18 of FOISA. Section 19 of FOISA sets out what that notice should contain.
16. The Commissioner notes that the SPCB chose not to follow the FOISA process, but to deal with Mr X's request as a general enquiry, providing the information he had asked for (such as it held).
17. The Commissioner also notes that the SPCB did not withhold information, disclosing all the information it held. In such circumstances, there is no statutory requirement to issue a notice under section 16, 17 or 18 of FOISA providing information about the procedure for complaints and the rights of appeal as required by section 19.
18. The Commissioner therefore finds that FOISA did not require the SPCB to provide Mr X with information as to his rights of appeal when responding to his initial request. That said, even when a public authority believes it has fully satisfied a request, it is good practice to explain to applicants their rights of appeal under FOISA.
19. The Commissioner observes that, in any event, Mr X was not hindered from submitting a request for review to the SPCB.

### **The review process**

20. In his application for a decision, Mr X expressed dissatisfaction that the SPCB did not carry out a review under FOISA.
21. Section 20(1) of FOISA states that "An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request." The format of such a request is set out in section 20(3) (reproduced in the appendix to this decision).



22. The Commissioner is satisfied that Mr X's letter of 25 September meets the requirements of section 20(3). Consequently, the Commissioner is satisfied that Mr X's letter of 25 September 2013 was a formal request for review that should have been dealt with under FOISA. She concludes that the SPCB failed to do so and, in so doing, the SPCB failed to comply with the requirements set out in section 21 of FOISA.
23. The SPCB confirmed that it dealt with Mr X's request for review under its general enquiry process rather than the FOISA process, explaining that this made no difference to the outcome as all the information that it held was released to Mr X. Mr X commented that, had his requirement for review been handled under FOISA, it may well have been dealt with afresh with the possibility of a different outcome. The Commissioner does not find this to be the case, as already explained.
24. As the SPCB dealt with Mr X's correspondence as a general enquiry, its letter of 3 October 2013 did not provide him with details of his rights of application to the Commissioner and of appeal. It therefore failed to comply with section 21(10) of FOISA.
25. Given the explanations provided in this notice, and given that she is satisfied that Mr X received all the relevant information which was held by the SPCB, the Commissioner does not require the SPCB to take any action with regard to the failures identified above.

#### **Further comments on good practice**

26. FOISA does not require public authorities to notify the requester of their rights of appeal where all information requested is provided in response to an information request. However, paragraph 5.1 of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004<sup>1</sup> states that it is best practice for authorities to provide details of review procedures when responding to all requests. It continues:

“This includes those where all information requested is being provided in response to a request, because the applicant may be dissatisfied in some way with the handling of the request or believe that further information might be held. However, it excludes responses to ‘business as usual’ requests, where all of the information requested by the applicant is routinely provided and the authority has no grounds for suspecting there is any possibility that the applicant will be in any way dissatisfied with the response.”
27. Where requests are dealt with as business as usual and a review request is subsequently received, it is good practice for authorities to reconsider their approach and advise the requester accordingly. It is also good practice to advise the requester that all information has been provided where that is the case.

<sup>1</sup>See <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



## DECISION

The Commissioner finds that the Scottish Parliamentary Corporate Body (the SPCB) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr X.

The Commissioner finds that the SPCB provided Mr X with the information he requested in line with section 1(1) of FOISA.

The Commissioner finds that the SPCB failed to comply with the requirements of section 21 of FOISA in responding to Mr X's request for review.

Given the circumstances, the Commissioner does not require the SPCB to take any action in respect of this failure.

## Appeal

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Should either Mr X or the Scottish Parliamentary Corporate Body 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**  
**13 January 2014**



## Appendix

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### Relevant statutory provisions

#### 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.

...

##### 19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

##### 20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.

...

- (3) A requirement for review must-
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify-



- (i) the request for information to which the requirement for review relates; and
- (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

...

## **21 Review by Scottish public authority**

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
  - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
  - (b) substitute for any such decision a different decision; or
  - (c) reach a decision, where the complaint is that no decision had been reached.

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.