

Decision Notice



Decision 005/2013 Mr G and the Scottish Prison Service

ICM Guidance Manual and Folder

Reference No: 201201759

Decision Date: 18 January 2013

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Scottish Information Commissioner

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Summary

Mr G asked the Scottish Prison Service (SPS) for a copy of its Integrated Case Management Guidance Manual and Folder. The SPS advised Mr G that, as the item was already accessible to him in the prison library, it was not obliged to provide him with a copy under FOISA.

Following an investigation, the Commissioner found that the information was not exempt from disclosure under section 25(1) of FOISA. Given the size of the document, the time allotted to Mr G was not sufficient to give him “reasonable access” to the document. Although the SPS advised the Commissioner that the document was accessible through a short term loan, the SPS had not told Mr G this – this breached section 15(1) of FOISA.

During the investigation, the SPS provided Mr G with a copy of the information he requested. The Commissioner does not require the SPS to take any further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(2)(a) (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 16(1)(c) and (d) (Refusal of request); 25(1) (Information otherwise accessible)

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

1. On 20 May 2012, Mr G wrote to the SPS requesting the following information:

“I would like to study a copy of the ICM Guidance Manual and would be happy if I could be provided with one before my case conference. Please treat this request as a Freedom of Information (Scotland) Act request”.
2. The SPS responded on 22 May 2012. In its response, the SPS advised Mr G that the ICM Guidance Manual was available in the reference section of the prisoners’ library. The SPS also advised Mr G that all freedom of information requests must be directed to a named member of staff, and provided contact details for that individual.



3. On 27 May 2012, Mr G wrote to the SPS again, noting its advice but pointing out that he had only 15 minutes in the library once a week, which, as the ICM Guidance Manual was “reference only”, was not sufficient. Mr G also asked the SPS if he could be loaned a copy of the ICM Guidance Manual as his ICM meeting was scheduled for the following week. Mr G suggested that an overnight loan would be acceptable.
4. The SPS responded on 30 May 2012, advising Mr G that it had nothing to add to its previous responses to him, and suggesting that he take his request to the prison management team.
5. On 1 June 2012, Mr G asked to meet the hall manager in order to discuss his request for a copy of the ICM Guidance Manual. (It is not known if this meeting took place, or its outcome.)
6. On 11 June 2012, Mr G wrote to the SPS again requesting the following information:

“A copy of the Integrated Case Management Guidance Manual and a copy of the other information held in the Integrated Case Management Folder (ICM Manual and Folder) in the reference section of the prison library”.
7. The SPS responded on 29 June 2012. It advised Mr G that, under section 25(1) of FOISA, it was not required to provide information in response to a request if the information was already reasonably accessible to the requester. The SPS stated that Mr G had access to the prison library for 45 minutes every week.
8. On 10 July 2012, Mr G wrote to the SPS requesting a review of its decision. Mr G disagreed with the application of section 25(1) of FOISA. He noted that weekly attendance at the library is not always guaranteed, and that he needed to study the information and refer to it when necessary, which could only be done if he had his own copy. He also argued that, while he may have a 45 minute slot to attend the library, in practice his time in the library amounted to only 15-20 minutes, which was not sufficient to study any document and also choose new library books.
9. The SPS notified Mr G of the outcome of its review on 3 August 2012. In its review outcome, the SPS maintained its previous position without amendment. The SPS noted that it did not consider the ICM Manual and Folder to be a complex or extensive document, and it was satisfied that 45 minute sessions provided Mr G with enough time to read and take notes as necessary. The SPS acknowledged that it was impossible to guarantee Mr G's library session would always be available, but it considered that there is reasonable and regular access to this facility.
10. On 14 September 2012, Mr G wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. The application was validated by establishing that Mr G had made a request for information to a Scottish public authority and had 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

12. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 4 October 2012 that an application had been received from Mr G and that an investigation into the matter had commenced. The Ministers were also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and were asked to respond to specific questions.
13. Subsequent references in this decision to submissions requested and received from the SPS are references to those sought and received from the Ministers' Freedom of Information Unit on behalf of the SPS.
14. The SPS responded to the investigating officer's questions and provided comments on Mr G's application. During the investigation, the SPS provided Mr G with a copy of the information he had requested.
15. The relevant submissions received from both the SPS and Mr G will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr G and the SPS and is satisfied that no matter of relevance has been overlooked.
17. As noted above, the SPS provided Mr G with a copy of the ICM Guidance Manual and Folder during the Commissioner's investigation. This decision will consider whether the SPS was correct to withhold the information under section 25(1) of FOISA when it responded to Mr G's request and request for review.

Section 25(1) – Information otherwise accessible

18. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
19. The key question to be considered in relation to Mr G's request is therefore whether the particular information he requested was reasonably accessible to him.



20. The SPS has submitted that the information requested by Mr G is exempt from disclosure in terms of section 25(1) of FOISA, because it is held in the prison library and is therefore reasonably accessible to him or any other prisoner who attends the library.
21. The SPS advised that Mr G's housing block is allocated one 45 minute session at the prison library every week, and it provided the Commissioner with a copy of the prison library rota to demonstrate this.
22. Mr G has argued that while, in theory, his block is allocated 45 minutes for library access each week, in practice this usually amounts to only 15-20 minutes. Mr G maintains that this is not enough time to read and take notes from the ICM Manual and Folder as well as selecting a new set of library books.
23. In addition, Mr G noted that he had attended an offender management course from August 2011 to March 2012 and from July 2012 to the time of writing, and that both of these courses took place on Wednesday afternoons, thereby denying him access to the library at his appointed time.
24. In response, the SPS noted that Mr G was not attending any such course at the time he made his request and so was able to utilise the full 45 minutes of his allocated library slot. The SPS also advised that, if a prisoner was unable to visit the library during their allocated slot due to attendance at an offender management course, attempts would be made to facilitate access at a separate time. The SPS did not state whether or not such an attempt had been made in the case of Mr G.
25. The SPS argued that, in addition to the 45 minute library slot offered to Mr G on Wednesday afternoons, the accommodation in which Mr G is based provides him with 45 minutes of library access on Monday mornings. The SPS explained that this time is allocated from his work party, and that work party staff facilitate this access.
26. Mr G acknowledged that he has access to the library via a work party on Monday mornings, but advised that this access only occurs on three out of every four Mondays, and that access is limited to 10-15 minutes.
27. In its initial submission to the Commissioner, the SPS also stated that Mr G could have requested a short term loan of the document from the library; however, it noted that he did not appear to have done so.

Was the information reasonably accessible to Mr G?



28. The Commissioner has considered Mr G's arguments regarding his attendance at an offender management course scheduled for the afternoon that his prison block has an allocated library visit. If this was Mr G's only point of library access, the Commissioner would have to give serious consideration as to whether the SPS had provided him with reasonable access to the information he is seeking. However, as noted above, at the point at which Mr G made his information request, he was not attending any such course and was able to utilise his allocated library slot on Wednesday afternoons. In addition, the Commissioner notes that he has access to the library on Monday mornings, via his work party, and that the SPS has indicated that attempts are made to provide alternative library access to the affected prisoners in cases where course attendance clashes with library slots.
29. The SPS and Mr G disagree about the time he actually has in the library each week. The Commissioner has no way of determining whether or not Mr G has access to the prison library for a full 45 minutes every week, or twice a week, as there are no 'timesheets' or 'log in' forms recorded for library visits. Mr G has suggested that the Commissioner view CCTV images of his entry and exit to the library, but she does not consider this to be necessary in the circumstances of this case. The Commissioner has been advised that, in total, the information requested by Mr G comprises almost 170 pages and that some of these pages consist of forms or templates. Whether or not Mr G was able to spend all of his allocated 45 minutes in the library, the Commissioner is not persuaded that one (or even two) library sessions a week would be sufficient for him to closely study and take notes from the ICM Manual and Folder. The Commissioner notes that both parties agree that attendance at library sessions is not always guaranteed.
30. Regardless of the time Mr G may or may not have to spend in the prison library each week, the Commissioner notes that the SPS has argued that Mr G can request a short term loan of the ICM Manual and Folder. The SPS has advised that if a prisoner wants a specified item on a short term loan, all they have to do is ask the librarian; there are no forms to fill in and approval is immediate. The SPS noted that each request for a short term loan is considered on its merits and therefore repeat loans are possible.
31. The SPS noted that the prison librarian had never been asked for a short term loan of the requested item, but that she saw no reason why it could not be arranged. The SPS explained that the short term loan period is determined by the librarian and is dependent on demand for the item, but generally it is for between two and seven days. The ICM Manual and Folder was a low-demand item, and so one copy was deemed to be sufficient; however the SPS confirmed that it had now added a second copy to the library.
32. When asked how a prisoner would know about the procedures for short term loans, the SPS stated that the prisoner would be informed of the short term loan at the point of the request, and argued that Mr G is aware of library procedures, as are all prisoners.



33. The Commissioner notes that, in his letter to the SPS dated 27 May 2012, Mr G had asked if it was possible to get an overnight loan of the ICM Manual and Folder. The SPS has provided no evidence (documentary or otherwise) to show that Mr G already knew about short term loan procedures. In its response to Mr G, the SPS did not explain to Mr G that could obtain the information through such a loan, but merely stated that he should contact his hall first line management team. The Commissioner does not consider this to be a helpful response, as discussed later on in this decision.
34. In later submissions, Mr G confirmed that he had spoken with the librarian to determine what the policy was regarding short term loans and how he could get one. He noted that the librarian advised him he could obtain an overnight loan of the ICM Folder, but told him he would only be able to do this once. Mr G submitted that no explanation of why he could only borrow this item once was provided.
35. The Commissioner raised the issue of a 'one off' short term loan with the SPS. The SPS acknowledged that this was the practice at the prison which housed Mr G, but that it was not the practice across all SPS prisons. The SPS noted that the prison in question had since reviewed this practice and that limitations on the number of short term loans of a single item will now cease, and further loan periods will be available subject to demand.
36. The SPS submitted that, in light of the circumstances in this particular case, it had decided to provide Mr G with his own copy of the ICM Guidance Manual and Folder. Mr G has confirmed that he now has a copy of all of the information he had requested.
37. The Commissioner takes the view that, if Mr G had been able to borrow the ICM Manual and Folder through regular short term loan requests, the information would have been reasonably accessible to him and exempt under section 25(1) of FOISA. However, as noted previously, Mr G had asked about the possibility of a loan and the SPS failed to advise him that this could be arranged. Without that knowledge, Mr G could not access the information through a short term loan and was only able to access it during his library sessions, which were not long enough or frequent enough to make the information reasonably accessible. Furthermore, when, during the investigation, Mr G found out about the possibility of a short term loan, he was told that he could only have a single short term loan of the ICM Guidance Manual and Folder, which would not have been sufficient to make the information "reasonably accessible" to him. The Commissioner finds that, in the circumstances of this case, the information was wrongly withheld under section 25(1) of FOISA.

Section 15(1) of FOISA – Duty to provide advice and assistance

38. Section 15 of FOISA requires a Scottish public authority to provide advice and assistance to a person who proposes to make, or has made, a request for information to it, so far as it is reasonable to expect it do so. In cases where the authority considers the requested information to be exempt from disclosure in terms of section 25(1) of FOISA, it would be reasonable to supply advice on how a requester can otherwise obtain the information they are looking for.



39. The SPS argued that Mr G was aware of library procedures, but appears to have taken no steps to ensure that he knew he could make a short term loan request.
40. In the circumstances, the Commissioner must conclude that the SPS failed to provide adequate advice and assistance to Mr G, as required by section 15(1) of FOISA.

Other matters to consider

41. In his application to the Commissioner, Mr G highlighted his concern that the SPS's responses dated 22 May 2012 and 30 May 2012, in which his requests were refused, did not fully comply with section 16(1)(c) and (d) of FOISA.
42. The Commissioner has considered the SPS's response to Mr G's letter dated 20 May 2012, and notes that, while it advised Mr G that the requested information is held in the prison library, it did not cite any exemptions or give him any other formal notification as to why it had not provided him with the information he requested. In the circumstances the Commissioner finds that the SPS breached sections 16(1)(c) and (d) of FOISA.
43. In its response dated 22 May 2012, the SPS advised Mr G that all freedom of information requests need to be made through appropriate channels, and directed him to a named individual. The Commissioner would comment that, while the SPS employee who received Mr G's initial complaint may not personally process information requests, it should not be up to the requester to re-direct their query elsewhere. Under FOISA, a Scottish public authority is responsible for dealing with all information requests it receives, whether addressed to a senior officer or a junior member of staff. If the recipient of Mr G's initial request does not usually handle such requests, the Commissioner would expect that person to send the request to the named person to whom Mr G was directed.
44. The Commissioner would reiterate that requests are made to Scottish public authorities, not to individuals working in those authorities. The SPS may wish to review its current training procedures to ensure that all its staff know how to identify an information request and are clear about the SPS's procedures for dealing with such requests.



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 G.

The Commissioner finds that the SPS incorrectly withheld information under section 25(1) of FOISA, and failed to provide the advice and assistance required in order to comply with section 15(1) of FOISA.

The SPS also failed to comply with the requirements for the content of refusal notices set out in section 16(1)(c) and(d) of FOISA.

Given that the SPS has now provided Mr G with a copy of the information he had requested, the Commissioner does not require the SPS to take any further action in respect of these failures.

Appeal

Should either Mr G or the Scottish Prison Service wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
18 January 2013



Appendix

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.

2 Effect of exemptions

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-

...

- (c) specifies the exemption in question; and



(d) states (if not otherwise apparent) why the exemption applies.

...

25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...