

Decision Notice

Decision 057/2016: Mr G and the Scottish Prison Service

Procedure for persons of the opposite gender entering a prisoner's cell: failure to respond within statutory timescales

Reference No: 201502438

Decision Date: 07 March 2016



Scottish Information
Commissioner

Summary

On 13 August 2015, Mr G asked the Scottish Prison Service (the SPS) for information about the procedure in place for persons of the opposite gender entering a prisoner's cell. This decision finds that the SPS failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
13 August 2015	Mr G made an information request to the SPS.
10 September 2015	The SPS responded to the information request.
12 September 2015	Mr G wrote to the SPS requiring a review of its decision.
	Mr G did not receive a response to his requirement for review.
14 December 2015	Mr G wrote to the Commissioner's Office, stating that he was dissatisfied with the SPS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
29 February 2016	The SPS was notified in writing that an application had been received from Mr G and was invited to comment on the application.
4 March 2016	The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

1. 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.
2. It is a matter of fact that the SPS did not provide a response to Mr G's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
3. The SPS confirmed that the requirement for review was received at HMP Glenochil.
4. The SPS explained that staff at Glenochil Prison had sought advice from SPS Headquarters on how to respond to Mr G's request. Due to a misunderstanding on who was responding to Mr G, it confirmed that the requirement for review had not been processed.
5. The SPS acknowledged that it had failed to respond to the requirement for review and confirmed this issue will be raised at the next bi-annual FOISA coordinators meeting.
6. The SPS responded to Mr G's requirement for review on 4 March 2016, so the Commissioner does not require it to take any further action in relation to Mr G's application. The Commissioner was provided with a copy of the review response.

7. The Commissioner notes that the SPS apologised to Mr G for the misunderstanding in processing his requirement for review.

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. In particular, the SPS failed to respond to Mr G's requirement for review within the timescale laid down by sections 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of this failure, in response to Mr G's application, given that a review has now been carried out and the outcome communicated to Mr G.

Appeal

Should either Mr G or the Scottish Prison Service 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
Deputy Head of Enforcement

07 March 2016

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info