

# Decision Notice



Decision 060/2013 Mr L and the Scottish Prison Service

Policy and guidance documents

Reference No: 201202618  
Decision Date: 28 March 2013

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

On 23 September 2012, Mr L asked the Scottish Prison Service (the SPS) for copies of policy and guidance documents. The SPS told Mr L his requests were not valid under FOISA, as they were for copies of documents rather than information. Following a review, the SPS maintained this position, but provided some information to Mr L. It also stated that other information was readily accessible to him. During an investigation, the SPS accepted that the requests were valid and disclosed the remaining information to Mr L.

The Commissioner found that Mr L's requests were valid and that the SPS should have provided the requested information when responding to it.

## Relevant statutory provisions and other sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1)(c) (Requesting information); 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 23 September 2012, Mr L wrote to the SPS, requesting copies of a number of policy and guidance documents. He followed this with a further request of the same date, seeking copies of two further policy and guidance documents.
2. The SPS responded on 3 October 2012 and informed Mr L that (in its view) his requests were for copies of documents and did not clearly describe the particular information he was looking for. As such, it did not consider the requests to be valid in terms of section 8(1)(c) of FOISA: in support of this position, it referred to the Court of Session ruling in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73*<sup>1</sup>. It advised Mr L that he might wish to rephrase his requests, to describe clearly the information he was seeking.

---

<sup>1</sup> <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



3. On 7 October 2012, Mr L wrote to the SPS requesting a review of its decision. He believed he had described the information he was requesting adequately.
4. The SPS notified Mr L of the outcome of its review on 12 October 2012. It upheld its decision on the validity of the requests. In order to be helpful, the SPS provided Mr L with copies of certain of the documents he had requested, stating that the remaining information should be available to him within the prison library (section 25(1) – see below).
5. On 5 November 2012, Mr L made a further request, asking for the “information contained in” certain of the documents identified in his original request. The SPS responded to this on 16 November 2012, informing Mr L that it considered his letter of 5 November 2012 as a request for a further review (to which he was not entitled).
6. On 11 December 2012, Mr L wrote to the Commissioner. He stated that he was dissatisfied with the outcome of the SPS’s review and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr L had made requests 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 those requests. The case was then allocated to an investigating officer.

## Investigation

---

8. The SPS is an agency of the Scottish Ministers (the Ministers). On 22 January 2013, in line with agreed procedures, the investigating officer notified the Ministers in writing that an application had been received from Mr L. The Ministers were 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. In particular, they were asked to justify the SPS’s view that the requests were invalid and to explain why the withheld information was exempt in terms of section 25(1) of FOISA.
9. Subsequent references to contact with or submissions from the SPS are therefore references to contact with or submissions made by the Ministers on behalf of the SPS.
10. The SPS responded on 5 February 2013. It informed the Commissioner that it no longer wished to rely upon any exemptions in relation to the information held, confirming that it had provided the outstanding information to Mr L. It made no other comments on its handling of Mr L’s request.
11. Mr L acknowledged receipt of the information provided, but commented that one document had not been disclosed. The SPS subsequently provided him with this document. He continued to seek a decision from the Commissioner



## Commissioner's analysis and findings

---

12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr L and the SPS. She is satisfied that no matter of relevance has been overlooked.
13. The Commissioner notes that the SPS provided Mr L with the outstanding information during the investigation. It made no comments regarding its earlier view that Mr L's requests for information were invalid. Taking account of her own guidance on the validity of requests<sup>2</sup>, issued in the light of the Court of Session decision referred to above, she does not believe that this earlier view could be justified. She is satisfied that the requests described the information Mr L was seeking adequately, as required by section 8(1)(c) of FOISA.
14. In the circumstances, the Commissioner is satisfied that Mr L's requests were valid for the purposes of section 1(1) of FOISA. Therefore, the SPS was obliged to respond to them in accordance with Part 1 of FOISA.
15. The Commissioner notes that the SPS provided Mr L with certain information (and described the rest as otherwise accessible to him – see below) when responding to his requirement for review. However, it also maintained its position the requests were invalid: in doing so, it failed to deal with the requests in accordance with section 1(1) of FOISA.

### Section 25(1) – information otherwise accessible

16. 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 other words, it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
17. In responding to Mr L's requirement for review, the SPS informed him that certain information was available to him within the prison library. It did not refer to section 25(1) specifically, but that appears to have been the intended effect of its reference to the library. Mr L did not accept that all of the information he sought was accessible there. He also argued that restrictions on access to information in the library meant that information there was not reasonably accessible to him.
18. In its response to the Commissioner, the SPS submitted that it no longer wished to rely upon any exemptions in relation to Mr L's requests for information. It did not provide any submissions regarding its earlier view that the information was otherwise available.

---

<sup>2</sup> <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



19. Given that the Commissioner did not receive any relevant submissions from the SPS on the accessibility of the information, she cannot be satisfied that the information requested could reasonably be obtained by Mr L other than by requesting it under section 1(1) of FOISA. Consequently, the Commissioner is not satisfied that the information could have been withheld under section 25(1) of FOISA. Therefore, in describing the information as accessible to Mr L, the SPS failed to deal with his requests in accordance with section 1(1) of FOISA.

## DECISION

The Commissioner finds that the Scottish Prison Service failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr L. In particular, it was wrong to find that the requests failed to meet the requirements of section 8(1)(c) of FOISA and could not justify the withholding of any information from Mr L (under section 25(1) of FOISA or otherwise).

Given that Mr L was provided with the information he sought during the investigation, the Commissioner does not require the SPS to take any action in respect of these failures.

## Appeal

---

Should either Mr L 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.

**Margaret Keyse**  
**Head of Enforcement**  
**28 March 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.

...

##### 8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...

##### 25 Information otherwise accessible

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

...