

Decision Notice



Decision 096/2011 Mr F and the Scottish Prison Service

SPS Policy on prisoner access to in-cell TV, wages and removal of privileges by local management.

Reference No: 201100211
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Scottish Information Commissioner

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Summary

Mr F asked the Scottish Prison Service (the SPS) for information as to the SPS local and national policy on prisoner access to in-cell TV, wages, and removal of privileges by local management. No response was provided by the SPS. Following a review, the SPS provided Mr F with information that it considered fully answered his request. Mr F was dissatisfied with this response and applied to the Commissioner for a decision.

The Commissioner found that in not responding to Mr F's request for information within 20 working days the SPS breached section 10(1) of FOISA. However, the Commissioner was satisfied that the SPS complied with section 1(1) of FOISA in providing Mr F with all relevant information it held in relation to his request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) and 10(1) (Time for compliance)

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 1 December 2010, Mr F wrote to the SPS requesting a copy of the SPS local and national policy on;
 - i. Prisoner access to in-cell TV,
 - ii. Wages, and
 - iii. Removal of privileges by local management.
2. A letter acknowledging receipt of this request was sent to Mr F on 10 December 2010. This indicated that the request had been received by the writer on 8 December 2010, and so the date by which a response should be supplied was 4 January 2011.
3. No further response was provided by the SPS to Mr F's request.



4. On 8 January 2011, Mr F wrote to the SPS requesting a review of its failure to respond to his request. He also indicated that it was unclear to him why his request had not been communicated to the writer of the acknowledgement letter before 8 December, since he had handed this to a member of SPS staff on 1 December 2010. He noted that the date upon which a request reached this individual was not relevant for the calculation of the period for response, and since the first working day after he had handed his request to a member of SPS staff was 2 December 2010, he had calculated that a response should have been issued by 31 December 2010.
5. The SPS notified Mr F of the outcome of its review on 25 January 2011. It apologised for the delay in responding, and explained that this was due to an administrative oversight. The SPS disclosed copies of the following information:
 - a. a Governors and Managers Advice Notice regarding the introduction of in-cell TV for prisoners;
 - b. a Governors and Managers Action Notice regarding a change to the charging system for in-cell TV for prisoners;
 - c. Prisoners Earnings Policy;
 - d. HMP Glenochil Prisoner Television Contract;
 - e. a “Statement of Privileges”, which provides guidance as to which items are considered to be privileges, those which are authorised for use, and the procedure for requesting such items and where they might be removed; and
 - f. rule 49 from the Prisons and Young Offenders Institutions (Scotland) Rules 2006, which relates to privileges, and states (inter alia) that the Governor of each prison shall establish a system of privileges to the groups or categories of prisoners detained in the prison.

The SPS considered that the provision of this information fully addressed Mr F's request.

6. On 31 January 2011, Mr F 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. Mr F indicated that he was dissatisfied with the SPS's failure to provide a timeous response to his request for information, and he believed it had failed to subsequently provide him with all the information he had requested. Mr F also expressed concern that the response to his request for review had been issued by the individual to whom he had addressed his initial request.
7. The application was validated by establishing that Mr F 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

8. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing (on 1 March 2011) that an application had been received from Mr F 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 provide copies of the information disclosed to Mr F, and to respond to specific questions.
9. Subsequent references to submissions requested and received from the SPS in this decision are references to those sought and received from the Ministers' Freedom of Information Unit on behalf of the SPS.
10. The SPS was asked in particular to provide submissions on Mr F's concern about the manner in which it calculated the timescale for its response, and its failure to respond to his request within 20 working days, as required under section 10(1) of FOISA.
11. Given Mr F's concern that he had not been provided with all relevant information held by the SPS which would address his request, the SPS was also asked to explain the nature of the searches that it carried out to locate information falling within the terms of Mr F's request. It was asked to confirm whether the SPS held any additional information falling within the scope of Mr F's request.
12. The SPS was also asked to comment on how it processed Mr F's request, and in particular, who dealt with the initial request for information and the subsequent request for review. It was asked whether it was usual practice for reviews to be conducted by the person to whom a request is initially addressed.
13. A response was received from the SPS on 22 March 2011, providing copies of the information supplied to Mr F, along with its comments and responses to the questions raised by the investigating officer.
14. All submissions received from the SPS and Mr F, in so far as relevant, will be considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr F and the SPS and is satisfied that no matter of relevance has been overlooked.



Section 1(1) of FOISA – General entitlement

16. Section 1(1) of FOISA creates a general entitlement to access to information held by a Scottish public authority (subject to the application of any of the exemptions in Part 2 of FOISA, and any other relevant provisions in Part 1).
17. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless it is exempt from disclosure under Part 2 of FOISA, or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
18. Mr F has expressed dissatisfaction with the information disclosed to him by the SPS as he is of the view that this information does not demonstrate any policy justification for the automatic withdrawal of TV privileges to a prisoner placed on “Status 6” wages. Mr F considers that either there is no policy justification for the automatic removal of TV privileges from prisoners without a weekly wage allocation, or that the SPS is applying a national or local policy which is not set out in the documents issued to him.
19. Mr F has indicated that a policy of ‘no wage - no TV’ is being applied without it having been properly promulgated or communicated. He maintained that the basis of such a policy is unclear, but its existence cannot be disputed. Mr F therefore invited the Commissioner to find that the SPS had failed to provide him with documentary authority for the policy as requested. He suggested that it may be contained within local guidance such as email messages or minutes of meetings.
20. The key question to be addressed by the Commissioner is therefore whether the SPS’s response to Mr F’s request for review identified and supplied all relevant recorded information held in relation to any local or national policy regarding prisoner access to in-cell TV, wages, or removal of privileges by local management.
21. The test he must apply in considering whether further information is held beyond that already supplied is not one of certainty, but on the balance of probabilities. When drawing conclusions in a case such as this, the Commissioner considers whether the searches undertaken by the public authority were adequate and sufficient to identify any relevant information; and whether they considered all likely sources of any information.
22. In a case such as this, it is not for the Commissioner to comment on whether an authority has suitable policies in place to meet its statutory requirements; it is only for the Commissioner to determine whether all relevant recorded information held by the SPS falling within the scope of the request has been identified and (unless exempt under Part 2, etc.) provided to Mr F.
23. The SPS has submitted that the information it disclosed to Mr F is all the information it holds which it considered was relevant to, and falling within scope of, Mr F’s request.



24. The SPS provided an explanation of the searches that it carried out to determine if any relevant information was held. The SPS advised that it conducted a search of its central document repository which retains Policy, Governor and Managers Action Notices. The SPS advised that it also carried out a search of the Prison and Young Offenders Institutions (Scotland) Rules 2006, together with carrying out a further search of local document repositories. These searches resulted in the identification of the information disclosed to Mr F in response to his request for review.
25. The SPS advised that a further assurance check was carried out as part of its review and that no further information was identified which fell within the scope of Mr F's request.
26. The SPS also carried out further searches during the course of the investigation, which included searching SPS databases and contacting key individuals. The SPS advised that no further relevant information was identified as a consequence of these searches.
27. Having considered the information that has been disclosed to Mr F, the Commissioner accepts that the information contained in the Governor and Managers Advice Note 69A/00, Governor and Managers Action Note 16A/07 and HMP Glenochil Prisoner Television Contract provides information as to SPS local and national policy on prisoner access to in-cell TV.
28. The Commissioner is also satisfied that the information disclosed to Mr F in the Prisoners Earnings Policy provides information as to the SPS local and national policy on wages.
29. The Commissioner notes that the "Statement of Privileges" supplied to Mr F sets out (in line with rule 49(1) of the Prisons and Young Offenders Institutions (Scotland) Rules 2006) the details of the arrangements with respect to privileged items within Glenochil prison. This document lists the items available for use as privileged items and gives guidance on the circumstances under which these privileges may be withdrawn.
30. Within the Governors and Manager Advice Notice 69A/00, reference is made to rule 40 of the now repealed Prisons and Young Offenders Institutions (Scotland) Rules 1994. When asked for comments with respect to this point, the SPS explained that rule 49 of the Prisons and Young Offenders Institutions (Scotland) Rules 2006 (a copy of which, as noted above, was supplied to Mr F) is the current equivalent of rule 40 of the Prisons and Young Offenders Institutions (Scotland) Rules 1994. The SPS indicated that the information in the "Statement of Privileges" document which was disclosed to Mr F sets out how the requirements of rule 49 of the 2006 Rules have been met.
31. Having read the "Statement of Privileges" document, along with the content of the Governor and Managers Advice note 69A/00 (and having confirmed that the Rule 40 referenced in that document is no longer in force), the Commissioner considers that these two documents set out the circumstances under which privileges may be allowed or withdrawn.



32. In considering the searches that the SPS carried out in order to determine what, if any, relevant information was held which would fall within the scope of Mr F's request, the Commissioner is satisfied that the SPS carried out adequate searches, in areas where relevant information would be likely to be held, enabling it to locate and retrieve all relevant information which would address Mr F's request. He is satisfied that no further recorded information setting out the policies requested by Mr F is held.
33. As noted above, it is not the role of the Commissioner to comment on whether the authority has sufficient policies in place to cover its statutory requirements. He can only consider whether the SPS has taken appropriate steps to identify and disclose (subject to the application of any exemptions) all relevant information which is held.
34. On the balance of probabilities, and for the reasons set out above, the Commissioner is satisfied that the SPS has located all relevant information, and that Mr F has been provided with all information held by the SPS which would address his request.

Section 10(1) – Time for compliance

35. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
36. The SPS did not provide a response to Mr F's request for information within this timescale, and so it failed to comply with section 10(1) of FOISA.
37. In his application, Mr F has expressed concern about the SPS's acknowledgement letter to him, which appeared to indicate that the 20 working day period had been calculated as if his request had been received on 8 December 2010, when he submitted it, in person, on 1 December 2010. As a result, he noted that the SPS incorrectly advised him that it should respond to his request on 4 January 2011, when he calculated the deadline as 31 December 2010.
38. The SPS has commented that the staff concerned were unable to recall whether Mr F's request was indeed received on 1 December 2010. However, it has acknowledged that on this occasion it may have failed to calculate the statutory response date correctly, and that any failure in this respect had been compounded by the subsequent failure to provide a response.
39. Since the SPS failed to respond by the date it had calculated as 20 working days following 8 December 2011 (4 January 2011), and it failed to provide a response by this date, there is no question that it breached section 10(1) of FOISA. This is the case whether the SPS miscalculated that date, or if Mr F's request was received by the SPS after 1 December 2010.
40. Nonetheless, it appears that there had been a miscalculation in this case, which, even if the SPS had responded within the period it had calculated, could well have contributed to a breach of the technical requirements of FOISA.



41. The Commissioner would encourage the SPS to ensure that all staff dealing with requests under FOISA are aware that the date for response should be calculated from the date of receipt of a request by a public authority, rather than receipt by the person handling the request.

Other matters of dissatisfaction

42. In his application, Mr F expressed concern that his requirement for review had been responded to by the same member of staff as he had submitted his request for information to.
43. The SPS advised that, although Mr F's initial request was directed to a particular member of staff, it would not have been that staff member who would have been asked to respond to the request as that responsibility falls to another individual within the prison.
44. On receipt of the requirement for review, the SPS advised that a decision was taken to ask the particular member of staff to carry out, and respond to, the review as they would not have been involved in responding to the initial request. The SPS explained that it considers it may be appropriate for reviews to be conducted by a person to whom an initial request is directed when they are not involved in the initial response. Furthermore, the SPS indicated that it is standard practice by the Scottish Ministers, of which the SPS is an agency, that where an initial response has not been provided, that it is the responsibility of the original receiver of the request to undertake the review and provide a full response to the requester.
45. The Commissioner considers that, in line with the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (the section 60 and 62 Code of Practice), a review should be handled by staff who were not involved in the original decision. However, as in this case, where no response was received to Mr F's initial request, the Commissioner agrees that it would be an acceptable course of action for the authority to ask the original case handler to continue dealing with the request and issue the review response.
46. The Commissioner finds that the manner in which the SPS handled Mr F's requirement for review is in line with the good practice set out in the section 60 and 62 code of practice.



DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr F.

The Commissioner finds that by providing all relevant information to Mr F, the SPS complied with Part 1. The Commissioner is satisfied on balance of probabilities that the SPS holds no further information falling within the scope of Mr F's information request.

However, the Commissioner finds that in not responding to Mr F's initial request within 20 working days, the SPS breached section 10(1), and failed to comply with Part 1 of FOISA.

Given that the Scottish Prison Service provided all relevant and non-exempt information to Mr F, the Commissioner does not require the Scottish Prison Service to take any action in response to this failure.

Appeal

Should either Mr F 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
23 May 2011



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.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.