

Decision Notice 117/2020

SPS guidance manuals: failure to respond

Applicant: The Applicant

Public authority: Scottish Prison Service

Case Ref: 202000612



Scottish Information
Commissioner

Summary

On 21 February 2020, the Applicant asked the Scottish Prison Service (SPS) for copies of:

- SPS Financial Policy and Guidance Manual
- PRL Standards of Assurance
- Parole Handbook

This decision finds that the SPS failed to respond to the request and request for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
21 February	The Applicant made an information request to the Scottish Prison Service.
	The SPS did not respond to the information request.
26 March 2020	The Applicant wrote to the SPS, requiring a review of in respect of its failure to respond and resending a copy of the information request.
24 April 2020	The Applicant received a response from the SPS, apologising for the failure to respond to the request of 21 February 2020 and explaining that it was not received. The response also refused to accept the request as valid, in terms of section 8(1)(c) of FOISA, on the basis that it was seeking copies of documents rather than identifying particular information.
27 April 2020	The Applicant wrote to the SPS, requiring a further review and clarifying the terms of the request.
8 June 2020	The Applicant wrote to the Commissioner's Office, stating that he was dissatisfied with the SPS's failure to respond (and the refusal to accept the requests as valid) and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
19 August 2020	The SPS was notified in writing that an application had been received from the Applicant.
28 August 2020	The SPS responded to the Applicant, accepting the information request as valid and disclosing information in response.
2 September 2020	Following the issue of the revised response, the SPS was invited to comment on the application.
9 September 2020	The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

1. The SPS has accepted that it was incorrect to treat the Applicant's request as invalid. The Commissioner agrees: there may be cases where reference to a document alone does not describe the information sought by the applicant adequately, but the Commissioner does not consider this to have been one of them. The request should have been responded to in terms of section 1(1) of FOISA, which carries with it compliance with the relevant timescales.
2. 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. This is subject to qualifications which are not relevant in this case.
3. It is a matter of fact that the SPS did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
4. 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. Again, this is subject to qualifications which are not relevant in this case.
5. It is a matter of fact that the SPS did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. The SPS responded to the Applicant's requirement for review on 28 August 2020, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
7. Further information was identified as being within the scope of the request and posted to the Applicant on 11 September 2020. The Applicant has received this additional information.

Decision

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 the Applicant. In particular, by not accepting the request as valid in terms of section 8(1)(c) of FOISA, the SPS failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of these failures, in response to the Applicant's application, given that a response has now been issued.

Appeal

Should either the Applicant 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

30 September 2020

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