

Decision Notice



Decision 118/2013 Mr L and the Scottish Prison Service

Destruction record

Reference No: 201300696
Decision Date: 25 June 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 19 November 2012, Mr L asked the Scottish Prison Service (SPS) to provide the record showing that a particular file had been destroyed (the destruction record). The SPS replied that it did not hold the information. Following a review, Mr L remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the SPS held no destruction record of the file in question and that it had dealt with Mr L's request for information in accordance with Part 1 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 19 November 2012, Mr L wrote to the SPS requesting information from the record which would show that his own hall record had been destroyed (the destruction record).
2. The SPS responded on 20 December 2012, indicating that it did not hold this information.
3. On 27 December 2012, Mr L wrote to the SPS requesting a review of its decision. Mr L commented that he had previously been informed by the SPS that his hall record had been destroyed. In terms of the SPS's own record retention policy (which indicates that a record of destruction must be retained), Mr L understood that a destruction record would exist.
4. The SPS notified Mr L of the outcome of its review on 21 February 2012. The SPS again informed Mr L that it did not hold the information he had requested.



5. On 10 March 2013, Mr L 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.
6. The application was validated by establishing that Mr L had made a request 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

7. On 17 April 2013, the investigating officer contacted the SPS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The SPS was asked to detail the searches carried out, and to provide copies of its record retention schedule and evidence destruction procedures.
8. The SPS provided its submissions on 7 May 2013. The investigating officer clarified some points with the SPS on 3 June 2013.

Commissioner's analysis and findings

9. 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.

Is a destruction record held by the SPS?

10. The Commissioner notes the submissions provided by Mr L, in which he explained why he considered that the SPS should hold the information he described in his request.
11. In its submissions, the SPS explained the purpose of a hall record, indicating that it is a record created by hall staff and used for day to day matters, such as recording the behaviour of prisoners for discussion at future meetings. The SPS stated that the records were local notes, only relevant to the prison and, more specifically, to the accommodation block and level within it. Sometimes information within the file is not considered important enough to retain permanently, but, if it is, it is placed in the prisoner's main file (which is held separately in the main filing system). For these reasons, the SPS indicated that it does not treat the local hall files as part of its "structured" filing system.
12. During the investigation, Mr L indicated he had in the past viewed his own hall record and was aware of the kind of information it would contain. He explained to the investigating officer he believed this file would be required to be kept, given the importance of its contents.



13. The SPS confirmed that when Mr L (along with a number of prisoners) was transferred to another prison, the hall files did not transfer with them, being local files. Any information considered to be of importance was moved to the main filing system and anything else was considered obsolete and hence deleted. In this instance, Mr L's hall file was deleted, but it was not considered necessary to record its destruction.
14. The investigating officer asked the SPS whether it was usual practice to delete hall records in this way at the time of a prisoner transfer, and asked the SPS to supply any relevant information documenting this practice. The SPS indicated that, with the introduction of an Integrated Case Management system, the practice of keeping hall files had largely diminished across the SPS. It also cited compliance with the Data Protection Act 1998 (DPA), specifically the fifth data protection principle, as one of the reasons for this practice. The fifth principle states that:

"personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes".
15. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.
16. The Commissioner notes that her remit in carrying out this investigation extends to the consideration of whether the SPS actually holds the information requested by Mr L (i.e. the information in a destruction record, not the hall file itself). She cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process, nor whether it should have retained particular records. Consequently, in this instance, she cannot comment on whether the SPS ought to have created and kept a destruction record when it destroyed Mr L's hall file.
17. As noted above, the SPS was required during the investigation to carry out further searches and provided detailed explanations of its record destruction practices. It confirmed that searches had been carried out in both prisons between which Mr L had been transferred, but neither the hall file itself nor a record of its destruction had been retrieved during those searches.
18. Having considered all relevant submissions, the Commissioner accepts that the SPS's searches were sufficient to identify any records of destruction, if held, and that the SPS took proportionate steps to establish whether information falling within the scope of Mr L's request was held. She is satisfied that the SPS's records retention procedures would not require a destruction record to be created for the hall file, as it was considered to be a local record not held in a structured filing system.



19. The Commissioner is therefore satisfied that the SPS held no information falling within the scope of Mr L's request and correctly gave Mr L written notice of this when responding to his request, as required by section 17(1) of FOISA.

DECISION

The Commissioner finds that the SPS complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr L.

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
25 June 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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.