

Decision Notice



Decision 125/2012 Mr N and the Scottish Prison Service

Policy documentation on prisoners' snack packs and clothing

Reference No: 201200796
Decision Date: 30 July 2012

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Rosemary Agnew
Scottish Information Commissioner

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



Summary

Mr N asked the Scottish Prison Service (the SPS) to provide him with policy documentation and Governor and Manager's Action Notices (GMAs) regarding the provision of prisoners' "snack packs" and clothing. The SPS responded that it had no formal policy or GMA on "snack packs" (which were the responsibility of individual establishments), while the information in relation to prisoners' clothing was otherwise accessible to Mr N. This position was accepted by the Commissioner following an investigation.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 2(1)(a), (2)(a) (Effect of exemptions); 17(1) (Notice that information is not held); 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 5 March 2012, Mr N wrote to the SPS requesting "a copy of all SPS policy documentation and GMAs [Governor and Manager's Action Notices] regarding the provision of prisoners' snack packs and clothing". GMAs are a means of advising and instructing Governors and Managers on matters of which they need to be aware or take notice.
2. The SPS responded on 20 March 2012. It stated that it had no formal policy or GMA on the provision of "snack packs", as responsibility for the provision of these depended on local establishment arrangements and need. The SPS considered the information Mr N had requested on prisoners' clothing to be accessible within the Prison and Young Offenders Institutions (Scotland) Rules 2011 (the Prison Rules), explaining that these could be accessed within Mr N's residential area or the Prison Library: consequently, it considered section 25(1) of FOISA to apply.
3. On 22 March 2012, Mr N wrote to the SPS requesting a review of its decision. He provided reasons why he understood there to be a policy on "snack packs" and submitted that the Prison Rules did not contain SPS policy or GMAs.



4. The SPS notified Mr N of the outcome of its review on 10 April 2012, confirming that it had undertaken further searches and upholding its original decision without modification.
5. On 20 April 2012, Mr N 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 N 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

7. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing that an application had been received from Mr N and invited to comment on the application. 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 (FOI) Unit on behalf of the SPS.
8. 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 clarify certain points and to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The relevant submissions received from both the SPS and Mr N will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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



Provision of prisoners' "snack packs"

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case. Section 17(1) of FOISA requires that, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect. That is what the SPS did in respect of that part of Mr N's request relating to prisoners' "snack packs".
12. The SPS was asked to explain how it established whether it held information falling within the scope of the request. The SPS responded that searches were undertaken of electronic records of all policy and GMAs held within the SPS resource library, using the search terms "prisoners snack packs" and "lock-up bags". No relevant documents were found. The SPS explained that enquiries were made of catering advisors and other relevant managers, and to other establishments to confirm whether or not relevant local policies existed. In addition, the responding officer relied on his own personal knowledge of previous standards.
13. The Commissioner asked the SPS if the arrangements in respect of Mr N's establishment were recorded. The SPS responded that they were not, but were managed on an *ad hoc* basis by the Catering Manager, based on requirement.
14. One of Mr N's concerns was that he had previously obtained information from which he understood that there was a policy in respect of "snack packs". The SPS's review outcome explained that this information might have come from previous SPS Operating Standards, which were no longer in operation or available. The Commissioner invited the SPS to comment on this point and was told that these standards were decommissioned and withdrawn in 2008. While certain elements of the standards were transferred to other documents, this was not the case with the standard Mr N was concerned with (which had lapsed).
15. The Commissioner considers that the information requested in this instance (i.e. information recorded in official policy documentation and GMAs) should be readily identifiable by the SPS, if held. The SPS has explained the searches it undertook to identify and locate the information, and the related enquiries it made of staff. These all appear reasonable and appropriate in the circumstances, taking account of the Commissioner's existing knowledge of the SPS's records and systems.
16. The Commissioner cannot now investigate how the SPS dealt with Mr N's previous request, or consider whether it should have retained records pertaining to that request. She notes that Mr N was not provided with further information on the revocation of the former Operating Standards, but is satisfied from the information she has received during the investigation that they are no longer in force.



17. The question for the Commissioner in this case is whether she is satisfied, on the balance of probabilities, that the SPS held no information falling within the scope of the relevant part of Mr N's request. Having considered all of the relevant submissions, the Commissioner is satisfied that the SPS took adequate steps to determine whether it held that information. In the circumstances, she accepts that it did not hold the information.

Provision of prisoners' clothing

18. 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. This exemption is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
19. In relation to prisoners' clothing, the SPS referred to section 25(1) of FOISA in its response to Mr N. The SPS stated that the information he sought was available in the Prison Rules, which were held in the residential area or prison library and therefore were reasonably accessible to Mr N.
20. Mr N did not accept that the Prison Rules could be considered to contain SPS policy or GMAs. The Commissioner has considered this argument, but finds that it would be an unduly restrictive interpretation of the term "policy" to exclude the Prison Rules from its ambit. While (as the SPS acknowledges) they take the form of delegated legislation (a Scottish Statutory Instrument), they are clearly part of the regulatory framework governing the treatment of prisoners by the SPS. The Commissioner also notes that the SPS, not unreasonably, categorises the Prison Rules as a policy document on its website. In the circumstances, bearing in mind that Part 4 of the Prison Rules clearly has a bearing on the subject, she would consider it unreasonable to find that the SPS breached Part 1 of FOISA by considering the Prison Rules to fall within the scope of that part of Mr N's request relating to the provision of prisoners' clothing.
21. The SPS explained where the Prison Rules could be accessed within the prison and this does not appear to be disputed by Mr N. In the circumstances, the Commissioner accepts that the SPS was entitled to apply section 25(1) of FOISA to this information. Of course, the question remains whether the SPS held any other relevant information
22. The SPS explained that a search was carried out as described in paragraph 12, using the term "prisoners clothing". This found no information falling within the scope of the request. The Commissioner accepts that this was an adequate search in the circumstances and therefore is satisfied that the SPS held no information falling within the scope of Mr N's request, in addition to that contained within the Prison Rules.



DECISION

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

Appeal

Should either Mr N 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
30 July 2012



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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
- ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
- (a) section 25;
- ...



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.

...

25 Information otherwise accessible

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

...