

Decision Notice

Decision 139/2016: Mr H and the Scottish Prison Service

Policy and procedures

Reference No: 201600541
Decision Date: 28 June 2016



Scottish Information
Commissioner

Summary

On 24 December 2015, Mr H asked the Scottish Prison Service (SPS) for specific policies and procedures. The SPS provided some information to Mr H. After a review, Mr H remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had failed to provide Mr H with all of the information that it held. Given that all of the information has now been provided to Mr H, the Commissioner did not require the SPS to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 24 December 2015, Mr H made a request for information to the SPS. The information requested was:
 - a) SPS CCTV Code of Practice
 - b) SPS Food Service Operating Standards
 - c) SPS Guidance on Orderly Room Procedures
 - d) SPS Policy and Procedure relating to the searching of prisoners
 - e) Governors' and Managers' Action Notices (GMAs) relating to the searching of prisoners.
2. The SPS responded on 25 January 2016. In relation to parts a), c) and d) of his request, the SPS provided Mr H with extracts from the Prison and Young Offenders Institutions (Scotland) Rules 2011 (the Prison Rules) (wrongly referred to as 2016). It explained that the information requested at part b) was not held and provided the latest GMA (GMA 021A/14) regarding the searching of prisoners in response to part e).
3. On 28 January 2016, Mr H wrote to the SPS, requesting a review of its decision. In relation to part b), he believed the information to be held. In relation to parts a), c) and d) of the request, Mr H stated that the information provided was not what he had asked for, referring to documents he considered more relevant. In relation to part e), he stated that he was seeking all GMAs relating to the searching of prisoners.
4. The SPS notified Mr H of the outcome of its review on 29 February 2016. It explained that in relation to parts a), c) and d) of his request, the information was readily available within the prison library and so applied section 25(1) of FOISA. (Under section 25(1) of FOISA, information is exempt from disclosure if it is information the applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA.) It maintained that the information at part b) of his request was not held and, in relation to part e), explained that he had been

given the most recent GMA relating to the searching of prisoners: this superseded any previous GMAs, which were no longer valid.

5. On 23 March 2016, Mr H wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr H stated he had not been provided with the information requested in parts a), c), d) and e) of his request. He also commented, in relation to part b), that the SPS had a duty to assist (section 15 of FOISA) and could have provided him with a copy of the PRL (Prison Resource Library) “Standard of Assurance” relating to food.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr H made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 6 April 2016, the SPS was notified in writing that Mr H had made a valid application. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this application and answer specific questions, with particular reference to the steps taken to identify and locate any relevant information and its application of section 25(1) of FOISA.
9. The SPS provided submissions, confirming that it had conducted further searches. It provided him with additional information, in some cases subject to redaction. The information provided included further GMAs relating to the searching of prisoners (not all of which, it explained, were still in force).
10. Mr H acknowledged receipt of the additional information. He was still not satisfied that part d) of the request had been answered in full. From references in the disclosed information, he believed further relevant information should be held (including another GMA (020A/14)).
11. The SPS provided the Commissioner with a copy of GMA 020/14. The Commissioner is satisfied that this GMA does not fall within the scope of Mr H's request and need not be considered further.
12. Following further correspondence with the investigating officer, the SPS provided Mr H with additional information, providing guidance on the searching of prisoners. The SPS explained to Mr H that it did not consider this further information to fall within the scope of the request.
13. Mr H acknowledged receipt of the information disclosed during the investigation and confirmed that he was content he had been provided with the information requested. He remained dissatisfied with the SPS's handling of his request.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr H and the SPS. She is satisfied that no matter of relevance has been overlooked.

Information held by the SPS

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, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.
16. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority does or should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
17. The Commissioner has considered the information disclosed during the investigation, in the light of the submissions received from both Mr H and the SPS. She notes the SPS's views on the guidance documents provided on 18 May 2016, which it does not consider to fall within the scope of the request. It is all procedural guidance on the searching of prisoners, or the outcome of a search, and the Commissioner is satisfied that it does fall within the scope of part d) of the request. That it is guidance, and not definitive, does not take it outwith the scope of this part of the request, on a reasonable interpretation.
18. In its submissions to the Commissioner, the SPS explained the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Mr H's request, describing the areas searched and nature and outcomes of these searches.
19. Having considered all relevant submissions and the terms of Mr H's request, the Commissioner accepts that (by the close of the investigation) the SPS carried out adequate, proportionate steps to establish whether it held any further information falling within the scope of the request. She is satisfied that the additional information located has now been provided to Mr H.
20. However, it is evident that adequate searches were not carried out in dealing with Mr H's information request and requirement for review. If they had been, the Commissioner believes the relevant information should have been located and provided to Mr H at that time. This may have negated the need for Mr H to make an application to the Commissioner.
21. The Commissioner is concerned that it took an application to her before the SPS conducted adequate searches to provide information it held in relation to what she considers a relatively straightforward request for information.
22. Taking account of all of the circumstances, the Commissioner concludes that the SPS failed to comply fully with section 1(1) of FOISA, by failing (in dealing with Mr H's request and requirement for review) to identify, locate and provide all of the information it held and which fell within the scope of Mr H's request.

The Commissioner finds that, in the respects specified in Mr H's application, 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 Mr H.

In failing to provide Mr H with all the information it held and which fell within the scope of his request, the SPS failed to comply with section 1(1) of FOISA.

Given that all of the information has now been provided to Mr H, the Commissioner does not require the SPS to take any action regarding this failure, in response to Mr H's information request.

Appeal

Should either Mr H or the SPS 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.

Margaret Keyse
Head of Enforcement

28 June 2016

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.

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