

# Decision Notice

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## Decision 192/2014: Mr Q and the Scottish Prison Service

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### Reporting of telephone faults

Reference No: 201401015

Decision Date: 9 September 2014



Scottish Information  
Commissioner

## Summary

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On 29 October 2013, Mr Q asked the Scottish Prison Service (SPS) for information relative to the reporting of telephone faults. The SPS provided some information to Mr Q. The Commissioner carried out an investigation and found that the SPS had failed to provide Mr Q with all of the relevant information it held.

Given that all of the information has now been provided to Mr Q, the Commissioner did not require the SPS to take any action.

## Relevant statutory provisions

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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 the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 29 October 2013, Mr Q wrote to the SPS and, in relation to a previous complaint regarding faults to the telephone system, made a request for information. The information he sought included:  
... all and any information relative to reports of faults of prisoner telephones within this establishment since 1 August 2013, to include information as to the length of time which elapsed between each report and rectification of the problem.
2. The SPS responded on 21 November 2013. It provided Mr Q with some information falling within the scope of his request.
3. On 16 January 2014, Mr Q wrote to the SPS, requesting a review of its decision. He did not believe the SPS had provided all the information he sought. Mr Q drew the SPS's attention to specific reporting faults of which he was aware but on which the SPS had not supplied any information.
4. The SPS notified Mr Q of the outcome of its review on 5 February 2014. It provided Mr Q with further information, apologising for not supplying this earlier.
5. On 12 May 2014, Mr Q wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the SPS's review because he did not accept the authority had provided all the relevant information it held.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Q 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. The case was then allocated to an investigating officer

7. Section 49(3)(a) of FOISA requires the Commissioner to give the relevant Scottish public authority an opportunity to provide comments on an application. On 3 June 2014, the SPS was invited to comment on this application, and in particular to explain the steps it had taken to identify and locate the information requested.
8. The SPS responded, explaining that it had provided Mr Q with a further response on 4 July 2014, with further information falling within the scope of the request. It acknowledged that this further information should have been provided to Mr Q earlier and apologised (to Mr Q and to the Commissioner) for this oversight. The SPS also provided an explanation of the searches carried out.
9. Mr Q acknowledged receipt of the further disclosure and informed the Commissioner that this addressed the terms of his request fully. He sought a decision on the SPS's initial failure to provide all the information falling within the scope of his request.

## **Commissioner's analysis and findings**

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10. 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 Q and the SPS. She is satisfied that no matter of relevance has been overlooked.

### **Information held by the SPS**

11. 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 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.
12. 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 should hold.
13. The SPS explained the steps it had taken to establish what relevant information it held. Mr Q confirmed, following the provision of further information during the investigation, that he considered his request to have been addressed in full.
14. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that (by the close of the investigation) the SPS had taken adequate steps to identify and locate any relevant information it held. From the information provided during the investigation, however, it is also clear that it failed to do this satisfactorily in responding to Mr Q's information request and requirement for review. As a result, the SPS failed to comply fully with section 1(1) of FOISA.
15. Given that the request was met in full during the investigation, the Commissioner will not require any further action in response to Mr Q's application.

## Decision

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The Commissioner finds that the Scottish Prison Service (the SPS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Q. In failing to provide Mr Q 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 Q, the Commissioner does not require the SPS to take any action regarding this failure, in response to Mr Q's information request.

## Appeal

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Should either Mr Q or the Scottish Prison Service (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**  
**9 September 2014**

## Appendix: Relevant statutory provisions

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### 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.

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- (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.

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**