

Decision Notice



Decision 203/2011 Mr X and the Scottish Prison Service

Receipt of requirement for review

Reference No: 201100976

Decision Date: 06 October 2011

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether the Scottish Prison Service (the SPS) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr X.

Background

1. On 4 April 2011, Mr X wrote to the SPS requesting certain information relating to the management and operation of HMP Peterhead.
2. The SPS responded on 13 April 2011, for the most part on the basis that it did not hold the information requested.
3. On 21 April 2011, Mr X wrote to the SPS requesting a review of its decision. This related specifically to his first question, which had sought the total budgets for HMP Peterhead for the financial years 2010/11 and 2011/12, challenging the assertion that the 2011/12 budget had not been agreed.
4. Mr X wrote to the SPS on 26 May 2011, notifying the authority that he had not received a response to his requirement to review and that accordingly he was going to make an application to the Commissioner.
5. Mr X did not receive a response to his requirement for review and on 26 May 2011 wrote to the Commissioner's office, stating that he was dissatisfied with that failure 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 X 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 X and invited to comment on the application.
8. 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 Unit on behalf of the SPS.

Commissioner's analysis and findings

9. Section 21(1) of FOISA gives a Scottish public authority a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
10. Mr X's application to the Commissioner stated that he had made his requirement of review to the SPS on 21 April 2011. If it was received when it was initially sent, therefore, the SPS (in responding on 14 July 2011) would have failed to deal with it within the timescale required by section 21(1) of FOISA.
11. The SPS explained that it had responded to Mr X's original request on 13 April 2011, but had no record of being in receipt of a requirement for review dated 21 April 2011. It stated that it had not received this until after it had received Mr X's letter of 26 May 2011, when it had followed the matter up and obtained a copy from him. This had been received on 1 July 2011 and a response had been provided to Mr X on 14 July 2011.
12. The SPS also explained that it had interrogated its electronic records and paper files, but could find no record of having received the initial review requirement from Mr X. The SPS was asked to explain whether it kept a log of incoming correspondence or a post book (or similar inventory) for its headquarters (and in particular for the SPS's Chief Executive, to whom the requirement for review had been addressed) where such incoming correspondence would be recorded. It was also asked whether, if there were such a log or postbook, it could confirm that it had been searched to ascertain whether Mr X letter of 21 April 2011 had been received.
13. The SPS responded that it had no logbook of correspondence sent to the Chief Executive, but explained how the Chief Executive's mail was dealt with by its staff. On this basis, it was confident that had the requirement for review dated 21 April been received by the Chief Executive's office, it would have been passed to its FOI team. The SPS noted that it had received only 6 requirements for review in 2011 and Mr X's application was the first to suggest that a request for review had not been received.



14. The SPS's initial response of 13 April 2011 indicated that should Mr X be dissatisfied with the response he should write to the SPS's Chief Executive at its headquarters, providing an address. Mr X supplied the Commissioner with a copy of his letter, dated 21 April 2011, in which he requested a review. The Commissioner notes that Mr X did direct this letter to the person and address specified by the SPS in its letter of 13 April: he is also satisfied that it was a valid requirement for review. Mr X also quoted the case reference assigned by the SPS to his original request.
15. The question for the Commissioner here is when, or indeed whether, the SPS received Mr X's requirement for review dated 21 April 2011. This question is to be decided on the civil standard of the balance of probabilities.
16. Neither Mr X nor the SPS has been able to provide evidence that the letter of 21 April was received by the SPS, prior to a further copy being sent on 28 June 2011.
17. In this context, the Commissioner has noted the searches undertaken by the SPS for the letter of 21 April. He also notes that the wording the requirement of review contained in this letter is clear and explicit: it refers to his request, quoting the SPS's own reference number, and to FOISA, clearly stating his wish for a review and setting out why he is dissatisfied with the SPS's initial response to the relevant request. The Commissioner is of the view that it is likely that any member of SPS staff receiving such a letter would realise its import and action it accordingly, as a requirement for review.
18. In coming to this view, the Commissioner has taken into account his assessment of the SPS's practice in dealing with requests for information (and related matters), carried shortly before Mr X made his request¹. As the SPS has pointed out, the relevant areas of practice were generally identified as satisfactory: there is nothing in the outcome of that assessment to suggest that Mr X's requirement for review would not have been dealt with appropriately should it have been received.
19. In all the circumstances, therefore, the Commissioner accepts on the balance of probabilities that the letter of 21 April 2011 was not received by the SPS until it was resent by Mr X on 28 June 2011. Consequently, he is satisfied there is no basis for finding that the SPS failed to deal with the requirement for review in accordance with Part 1 of FOISA, as Mr X contended in his application to the Commissioner.
20. The Commissioner notes that the SPS responded to Mr X's requirement for review on 14 July 2011, following receipt of a copy (sent on 28 June 2011) on 1 July 2011.

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=4751&SID=2756>



DECISION

The Commissioner finds that the Scottish Prison Service acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr X.

Appeal

Should either Mr X 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.

Euan McCulloch
Deputy Head of Enforcement
06 October 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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