

# Decision Notice



Decision 220/2013 Mr Y and the Scottish Prison Service

Failure to respond to requirement for review

Reference No: 201301944

Decision Date: 7 October 2013

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**Rosemary Agnew**

Scottish Information Commissioner

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



## 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 Y.

## Background

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1. On 4 July 2013, Mr Y wrote to the SPS requesting certain specified information.
2. The SPS responded on 8 July 2013.
3. On 18 July 2013, Mr Y wrote to the SPS requesting a review of its decision.
4. Mr Y did not receive a response to his requirement for review and on 21 August 2013 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.
5. The application was validated by establishing that Mr Y 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.

## Investigation

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6. On 25 September 2013, the SPS was notified in writing that an application had been received from Mr Y and was invited to comment on the application.
7. The SPS responded on 2 October 2013 and its submissions are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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8. The SPS confirmed that the requirement for review was received by fax at the SPS Headquarters on 18 July 2013. Due to an administration error, the requirement for review was scanned in but not forwarded to the prison concerned for a response to be issued. Consequently, the prison was not aware of Mr Y's requirement for review until it was brought to its attention by the Commissioner on 25 September 2013. As a result, a review was carried out and a response issued to Mr Y on 2 October 2013. The response apologised for the failure to respond to the review request.
9. Section 21(1) of FOISA gives Scottish public authorities 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. Since the SPS did not provide a response to Mr Y's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA
11. Given that the SPS has now responded to Mr Y's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Y's application.

## DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Y, in particular by failing to respond to Mr Y's requirement for review within the timescales laid down by section 21(1) of FOISA.

Given that the SPS has responded to Mr Y's requirement for review, the Commissioner does not require the SPS to take any action in response to this failure.



## Appeal

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Should either Mr Y or the Scottish Prison Service 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**  
**7 October 2013**



## Appendix

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### 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.

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##### 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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