

Decision Notice



Decision 228/2013 Mr X and the Scottish Prison Service

Prison fitness facilities

Reference No: 201301600

Decision Date: 11 October 2013

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Rosemary Agnew

Scottish Information Commissioner

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Summary

Mr X asked the Scottish Prison Service (the SPS) for information regarding prison fitness facilities. The SPS provided some information to Mr X, further information being provided following a review and during the Commissioner's investigation. Following the investigation, the Commissioner accepted that the SPS held no further relevant information, but found that the SPS failed to supply all relevant information it held when responding to Mr X.

She also found that the SPS failed to respond to Mr X's request within the required timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance).

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 10 April 2013, Mr X wrote to the SPS requesting the following information:
An inventory of the weights and CV equipment located on each of levels 2, 3 and 4 of Ingliston Hall (HMP Edinburgh) as of today's date, whether or not actually in use at present, but indicating whether or not each item is actually in use. ... please indicate the ownership status [of each item].

Please provide me with all and any information held by local SPS management constituting plans, proposals or communications concerning the future development of fitness facilities within each of levels 2, 3 and 4 of Ingliston Hall to include removal or replacement of any items currently located within each of these locations.
2. The SPS responded on 10 May 2013. It provided Mr X with an equipment inventory, confirmation that all equipment was owned by the SPS and information outlining what appeared to be a review proposal pertaining to the removal of weights from residential halls and their transfer to other areas.



3. On 21 May 2013, Mr X wrote to the SPS requesting a review of its decision. In particular, Mr X was dissatisfied because (i) the response had taken one day longer than the required 20 working days; (ii) the specific location (i.e. level) of the equipment had not been identified; (iii) he thought equipment not actually in use might have been left out of the inventory, and (iv) he believed further information should be held comprising plans, proposals and/or communications.
4. The SPS notified Mr X of the outcome of its review on 10 June 2013 and provided him with a revised inventory containing the location of each item, with an explanation in relation to items not in use. It also provided information extracted from the minutes of an SPS PE Managers' meeting, which it considered relevant to the maintenance of such equipment. The SPS also apologised for the delay in responding to Mr X' request.
5. On 10 July 2013, Mr X 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 X made a request for information to a Scottish public authority and 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 investigating officer contacted the Scottish Government's FOI Unit, acting on behalf of 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. There was further correspondence with the SPS itself. The SPS was asked to respond to certain points raised by Mr X and to provide information on the searches it had carried out to identify and locate any information it held and which fell within the scope of Mr X' request.
8. Mr X was also asked for, and provided, submissions explaining why he was of the view that further information should be held by the SPS.
9. During the investigation, the SPS provided Mr X with further information falling within the scope of his request, consisting of a full and unredacted copy of the minutes of the SPS PE Managers' meeting referred to in paragraph 4 above.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr X and the SPS. She is satisfied that no matter of relevance has been overlooked.
11. The SPS's initial response to Mr X, the Commissioner notes, contained the following statement:

The future development of all satellite areas within Ingliston Hall as well as the rest of the establishment is under review. It is the proposal to remove all weights from the residential halls and transfer some of them into CV rooms and other areas into interview rooms. Funding has been secured for this purpose and it will be phased in throughout the establishment. This will be communicated through our normal process PIACS and prisoners' notices to the relevant areas. This is also on the remit of the National PE Forum to withdraw all weights from satellite areas back to the main gymnasiums.
12. The Commissioner also notes that in its review response to Mr X, while stating that it held no documentation in relation to future developments and proposals for the in-hall fitness facilities, the SPS did provide him with some further information. This was a redacted extract from a set of minutes from one of the SPS PE Managers' meetings, which contained a statement that a tendering exercise was underway in relation to new gym equipment.
13. During the investigation, the SPS provided Mr X with the full and unredacted copy of that same set of minutes. These minutes, the Commissioner notes, also contained an item headed "Free Weights Paper", referring to a paper commissioned to consider whether free weights should be removed from all main prison gymnasiums (which could impact upon their provision in satellite gymnasiums in the accommodation blocks).
14. The SPS provided the investigating officer with details of the searches it had carried out to identify and locate any information it held and which fell within the scope of Mr X' request. It stated that a search was conducted of the Prison Resource Library/Microsoft SharePoint site. A further search of the SharePoint site was carried out during the investigation, and the PE Manager was asked to look again for any relevant information, but none was found. The SPS submitted that there was no other source which could contain any further information falling within the scope of Mr X' request.
15. During the investigation, Mr X commented on the apparent lack of written evidence of any review process in relation to the provision of weights. He believed the SPS should explain why this was the case. He identified a lack of consistency in the SPS's various responses and suggested that if no further information was held by the SPS then its initial response had been misleading and unhelpful.



16. The SPS explained that its National PTI Forum was currently considering the use of free weights within the main gymnasiums of prisons and that an individual had been tasked with preparing a report to inform decisions about the availability of this equipment in the main prison gymnasiums. This was likely to be presented at the December meeting of the Forum, when further discussions were expected to take place on the next steps. If, for example, a decision was taken to remove weights from all main prison gymnasiums, the rationale for that decision might require to be applied to satellite gymnasiums in accommodation blocks.
17. The SPS stated that this explained the comments in the initial response to Mr X on the future development of satellite areas and the withdrawal of weights. The SPS conceded that this latter statement was not accurate because no decision had yet been taken. The SPS did not consider the report on free weights to fall within the scope of Mr X' request: clearly it does not, and could not, as it does not yet exist.
18. The SPS accepted that the information in the initial response to Mr X did suggest that further information should be held, especially the term "proposal". It confirmed that there was no concrete proposal and that the language used in this part of the response was unfortunate, partly as a result of the fact that it had been recollected from a conversation.
19. The SPS confirmed that there were no *"proposal to remove all weights from residential halls and transfer some of them into CV rooms and other areas into interview rooms"*. This statement, the SPS submitted, originated from a discussion that the writer had with a colleague and reflected that colleague's own views.
20. The SPS stated that the remainder of the initial response constituted views or discussions which were not recorded, because these views and discussions could not be progressed or formalised until a decision had been taken following consideration of the instructed free weights report. The SPS confirmed that for this reason it held no further information comprising relevant plans, proposals or communications, because there were none: any plans or proposals could only follow once decisions were taken on the use of free weights in the main prison gymnasium.
21. The SPS submitted that the information provided in the initial response was intended to assist Mr X, but accepted that this information suggested that further information should be held and caused unnecessary confusion.
22. Having considered the submissions provided by both Mr X and the SPS, and having taken account of the searches carried out by the SPS at the request and review stages and during the investigation, the Commissioner accepts that no further information is held by the SPS falling within the scope of Mr X' request. She is satisfied that the searches were reasonable and proportionate in the circumstances.



23. The Commissioner notes, however, that the initial response provided to Mr X served to complicate matters and added confusion to the process. She would expect that, in future cases, the SPS checks and verifies the validity of any information it provides in response to information requests. Particular care should be taken when providing comment or explanation based on personal understanding or views, rather than recorded information, to make clear that this is the case.
24. The Commissioner is also of the view that parts of the information provided to Mr X by the SPS on 28 August 2013 (the minutes of the SPS PE Managers' Forum dated 12 March 2013) fell within the scope of Mr X' request, in addition to the extract provided in response to Mr X' request for review. While the SPS acknowledged this by providing the minutes to Mr X during the investigation, and while the minutes had clearly been located (if perhaps not fully identified as relevant) earlier, the Commissioner must find that the SPS breached the requirements of section 1(1) of FOISA, by failing to supply all the information it held and which fell within the scope of the request.

Timescales

25. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain qualifications which are not relevant in this case.
26. The SPS issued a review response to Mr X on 10 June 2013, in which it apologised for taking one day longer than the time limit set down by section 10(1) in responding to his request.
27. Since the SPS did not provide a response to Mr X' request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
28. In the circumstances, the Commissioner does not require the SPS to take any further action in response to this breach.



DECISION

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

The Commissioner finds that the SPS complied with Part 1 by supplying relevant information to Mr X in response to his request and requirement for review. However, she also finds that it breached the requirements of section 1(1) of FOISA by failing to supply all the information it held and which fell within the scope of the request. Additionally she finds that in failing to provide a response to Mr X' request within 20 working days, the SPS breached section 10(1) of FOISA.

As the Commissioner is satisfied that no further information is held by the SPS which would fall within the scope of Ms X' request, and given the SPS's response to Mr X' requirement for review, the Commissioner does not require the SPS to take any action in response to these failures.

Appeal

Should either Mr X 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
11 October 2013



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.
- ...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- ...