

# Decision Notice



Decision 172/2011 Mr D and the Parole Board for Scotland

Deniers Programme

Reference No: 201101011

Decision Date: 17 August 2011

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle

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## Summary

Mr D asked the Parole Board for Scotland (the Parole Board) to provide information about the Deniers Programme (the Programme). The Parole Board provided information about its role, showing that it was not involved in the Programme. Mr D was not satisfied with this response, however, believing that the Parole Board was likely to hold information covered by the terms of his request. Following a review, the Parole Board advised him that it did not hold the information he had requested. Mr D remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the Parole Board did not hold any information falling within the scope of Mr D's request, and that it had complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by providing Mr D with written notice to that effect, as required by section 17(1) of FOISA.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Notice that information is not held).

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 31 March 2011, Mr D wrote to the Parole Board to request information about the Programme. He asked:
  - whether the Parole Board considered the Programme to be an accredited intervention programme and, if so, the date when the programme had been accredited;
  - whether the Parole Board had ever attached the Programme to the release licence of an offender, or had expected the Programme to be completed by an offender as part of any other condition applied to their release licence;
  - how many times in the last two years the Parole Board had applied the Programme [as a condition of a release licence] or another condition resulting in an offender being expected to complete such a programme.



2. The Parole Board responded on 27 April 2011. It advised Mr D that the introduction of offender programmes was solely a matter for the Scottish Prison Service, which was not obliged to consult the Parole Board before introducing such programmes. It identified the question of accreditation as a matter for the Scottish Prison Service. It explained that the Parole Board do not specify that an offender should undertake a particular programme: they might, where appropriate, recommend that a prisoner should undertake offence-focussed work to address certain offending behaviour, but it was for the supervising officer to decide what that work or programme should be.
3. On 3 May 2011, Mr D requested a review of the Parole Board's response. He believed the Parole Board had failed to provide the requested information, which it should have available.
4. On 17 May 2011, the Parole Board issued its review response to Mr D. It advised that the initial response provided to him was correct, because the Parole Board did not hold the information he had requested.
5. On 30 May 2011, Mr D wrote to request a decision from the Commissioner, in terms of section 47(1) of FOISA. He believed that the Parole Board would hold the information he had asked for, as it would be notified if an offender was recalled to prison.
6. The application was validated by establishing that Mr D 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 allocated to an investigating officer.

## Investigation

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7. On 25 July 2011, the investigating officer notified the Parole Board that an application had been received from Mr D and invited it to provide any comments it wished to make on the application, as required by section 49(3)(a) of FOISA. The Parole Board was asked to explain how it had established that it did not hold the requested information. The Parole Board was also asked whether it would ever be made aware that certain offenders had been required to complete the Programme.
8. On 3 August 2011, the Parole Board provided its response. Additional information was provided by the Parole Board in a telephone conversation with the investigating officer on 9 August 2011. The information provided by the Parole Board is considered in the next part of this decision.



## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr D and the Parole Board and is satisfied that no matter of relevance has been overlooked.

### Whether the information was held

10. When asked how it had reached the conclusion that it did not hold any information falling within the scope of Mr D's request, the Parole Board explained that previous licences had been examined. Board members had also been consulted, but had no knowledge of the Programme. The Parole Board reiterated that (as it had explained to Mr D) it did not require offenders to complete particular programmes – this would be a decision for the supervising officer.
11. The Parole Board was asked whether it would be notified if offenders were recalled to prison for breaching the conditions of their parole licence and, if so, whether this would include information about failure to complete any particular programme. The Parole Board advised that, although it would receive notification, this might only state that the terms of the licence had been breached, and would not show whether this was due to the failure to complete a particular programme.
12. As noted above, the Parole Board had previously advised Mr D that any requirement for offenders to complete particular programmes would be a matter for the supervising officer (normally employed by the Social Work service of the local authority) and not the Parole Board. The Parole Board had also explained that the introduction of offender programmes was a matter for the Scottish Prison Service.
13. On the basis of the information provided by the Parole Board in its responses to Mr D and during the investigation, the Commissioner accepts that the Parole Board does not (and did not at the time it dealt with the request) hold any information falling within the scope of Mr D's request. The Parole Board has explained, to the Commissioner's satisfaction, why it is not likely to hold the information requested by Mr D, and has confirmed that it carried out searches and enquiries which supported this conclusion.

### Section 17 – Notice that information is not held

14. Section 17(1) of FOISA states that where a Scottish public authority receives a request for information which it does not hold, it must give the applicant notice in writing that it does not hold the information.
15. The Parole Board's initial response to Mr D's request (27 April 2011) did not state specifically that the information he had requested was not held, although this was implied by the content of the response. The review response (17 May 2011) stated that the requested information was not held by the Parole Board. The Commissioner therefore finds that the Parole Board complied with section 17(1) of FOISA in relation to Mr D's request.



## **DECISION**

The Commissioner finds that the Parole Board for Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request from Mr D.

## **Appeal**

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Should either Mr D or the Parole Board for Scotland 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.

**Margaret Keyse**  
**Head of Enforcement**  
**17 August 2011**



## 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.
- ...
- (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.
- ...

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- ...

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