

# Decision Notice



Decision 221/2011 Mr Alistair P Sloan and the Scottish Prison Service

Alleged delays in seeking clarification

Reference No: 201101750

Decision Date: 8 November 2011

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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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 Sloan.

## Background

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1. On 16 July 2011, Mr Sloan wrote to the SPS requesting certain information for financial years 2008/9, 2009/10 and 2010/11. One of these was for:  
“the amount of profit made by the Scottish Prison Service from any of the ‘approved suppliers’ that prisoners can purchase items from (if possible for each establishment)”.
2. On 5 August 2011, the SPS sought clarification of part of this request, asking whether it was intended only to include suppliers in relation to prisoner telephone calls (given that the other two requests had related to such calls).
3. Mr Sloan replied on 5 August 2011, confirming that the request related to all items purchased on behalf of prisoners and for which prisoners were expected to pay. The SPS then responded on 2 September 2011, advising that it did not hold any information covered by this request and explaining why it considered this to be the case.
4. On 2 September 2011, Mr Sloan wrote to the SPS requesting a review of its decision. He queried whether clarification was in fact necessary in the circumstances, and complained that in any event there had been an unacceptable level of delay (of around three weeks) in seeking clarification.
5. The SPS notified Mr Sloan of the outcome of its review on 16 September 2011, upholding its initial response and providing further explanation as to its handling of Mr Sloan’s request.
6. Mr Sloan wrote to the Commissioner on 21 September 2011, stating that he was dissatisfied with aspects of the SPS’s handling of his request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Sloan 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

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8. On 7 October 2011, the SPS was notified in writing that an application had been received from Mr Sloan and was invited to comment on the application (as required by section 49(3)(a) of FOISA). A response was provided on behalf of the SPS on 6 October 2011: insofar as relevant, this is considered further in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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9. Mr Sloan queried in his application whether his request required clarification: he considered it clear enough as it stood. Even if that clarification had been necessary, however, he considered the SPS to have delayed unreasonably in seeking it.
10. Section 1(3) of FOISA governs the process by which clarification of a request may be sought, setting out that "provided that the requirement [for further information in order to identify and locate the requested information] is reasonable, the authority is not obliged to give the requested information until it has the further information". In this connection, the Commissioner has considered the relevant comments he has received from both Mr Sloan and the SPS. While it might have been reasonable to deal with the request in the absence of clarification had it been made by itself, given its proximity to two other requests relating to prisoner telephone calls he accepts (as the SPS has argued) that it was reasonable in the circumstances to clarify whether this request had the same focus.
11. Mr Sloan contended that what he believed to have been an unreasonable delay in seeking clarification was a breach of the SPS's duty to comply with his request promptly, as required by section 10(1) of FOISA. The Commissioner is not persuaded that this is the case, considering the matter to be more appropriately dealt with under the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Code of Practice), and therefore by extension as an aspect of the authority's duty to provide advice and assistance under section 15(1) of FOISA.
12. Section 15(2) of FOISA provides that a Scottish public authority can be taken to have complied with its duty under section 15(1) where it has conformed with the Code of Practice in a particular case. The Code of Practice<sup>1</sup> provides in section 1.5 that authorities should not delay in seeking clarification.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2009/12/07143953/9>



13. The SPS explained why, in this particular case, it had waited until the return from annual leave of an officer with specific knowledge and experience of the subject matter of the request. It noted that the officer had sought clarification within two days of returning to work. It also noted (as the Commissioner acknowledges) that it had, allowing for the obtaining of clarification, responded to the request within the relevant timescale laid down by section 10(1) of FOISA.
14. The Commissioner has considered the SPS's submissions and cannot characterise the time it took to seek clarification as unreasonable in the circumstances. Given the knowledge and experience of the officer concerned and the period of their planned absence, awaiting that individual's return to the office can be accepted as an appropriate course of action. The Commissioner notes (as the SPS has pointed out) that there was in any event a public holiday during the period in question and can find nothing in the rest of the authority's handling of the case which would suggest an intention to deal with the request other than promptly.
15. In light of all the circumstances outlined above, the Commissioner is satisfied that the SPS discharged its duty to provide advice and assistance in accordance with section 15(1) of FOISA in seeking clarification from Mr Sloan.

## DECISION

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

## Appeal

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Should either Mr Sloan or the SPS 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.

**Margaret Keyse**  
**Head of Enforcement**  
**8 November 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.

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- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
  - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

##### 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-

...

- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

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- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).