

Decision Notice



Decision 073/2012 Mr G and the Scottish Prison Service

Failure to carry out review

Reference No: 201200290
Decision Date: 19 April 2012

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Margaret Keyse

Acting Scottish Information
Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS



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 G.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 16 November 2011, Mr G wrote to the SPS requesting certain specified information.
2. The SPS responded on 14 December 2011 and informed Mr G that the information he requested was either not held, was reasonably accessible otherwise than requesting it under FOISA or that, by virtue of section 12 of FOISA, it was not required to comply with the request as to do so would exceed the prescribed cost limit of £600.
3. On 20 December 2011, Mr G wrote to the SPS by way of a fax transmission, requesting a review of its decision. In particular, Mr G questioned the SPS’s reliance on section 12 of FOISA.
4. Mr G did not receive a response to his requirement for review and, on 9 February 2012, wrote to the Commissioner, 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 G 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 decision. The case was then allocated to an investigating officer.



Investigation

6. The SPS is an agency of the Scottish Ministers (the Ministers) and on 6 March 2012, in line with agreed procedures, the Ministers were notified in writing that an application had been received from Mr G and invited to comment on the application, as required by section 49(3)(a) of FOISA. Subsequent references to contact with or submissions from the SPS are therefore references to contact with or submissions made by the Ministers on behalf of the SPS.
7. The SPS responded on 27 March 2012, explaining that it had no record of Mr G having submitted his request for review. The SPS explained that it had checked the various fax machines at its headquarters but had been unable to locate any request for review. It described its arrangements for receiving incoming faxes and the steps taken to locate this particular fax.
8. Mr G subsequently provided a copy of a fax transmission report, showing that the request for review had been sent to the SPS on 20 December 2011, to a fax number published on the SPS website.
9. The SPS carried out a review. On 30 March 2012, it provided the Commissioner with a copy of the review outcome, which was dated 28 March 2012 and which it stated had been sent to Mr G. This was not received by Mr G and had to be reissued. Mr G confirmed that he had received the response on 17 April 2012.

Commissioner's analysis and findings

10. 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 exceptions which are not relevant to this case.
11. The Commissioner has taken account of the SPS's description of its arrangements for receiving incoming faxes and the steps it took to locate this particular fax. He has also taken into account the existence of an apparently valid transmission report for the fax in question. On balance, he is satisfied that Mr G's requirement for review was received by the SPS, even if it could not be traced subsequently.
12. In all the circumstances, therefore, the Commissioner finds that the SPS failed to comply with section 21(1) of FOISA in dealing with Mr G's request for information.
13. Given that the SPS has now responded to Mr G's request for review, the Commissioner does not require the SPS to take any action in this case.



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 G, specifically by failing to respond to Mr G's requirement for review within the timescale laid down by section 21(1) of FOISA. She does not require the SPS to take any action in respect of this failure in response to Mr G's application.

Appeal

Should either Mr G 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
19 April 2012



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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