

# Decision Notice

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## Decision 137/2014 Mr T and the Scottish Prison Service

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### **Policy on data retention**

Reference No: 201400821

Decision Date: 19 June 2014



Scottish Information  
Commissioner

## Summary

On 23 January 2104, Mr T asked the Scottish Prison Service (SPS) for policy information relating to the retention of prisoner property cards. The SPS told Mr T that it did not hold the information requested. During the investigation, the SPS notified the Commissioner that it did hold information falling within the scope of the request and that it had been provided to Mr T. As a result, the Commissioner finds that the SPS was incorrect to inform Mr T earlier that it did not hold information falling within the scope of the request.

The Commissioner was satisfied by the end of the investigation that all relevant information had been provided to Mr T.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 23 January 2014, Mr T wrote to the SPS requesting the following information:  
“... all and any information setting out local and national SPS policy on data retention to the extent that this involves the retention and safeguarding of prisoners’ property cards.”
2. On 13 March 2014, Mr T wrote to the SPS, requesting a review on the basis that it had failed to respond to his request.
3. The SPS notified Mr T of the outcome of its review on 10 April 2014. The SPS apologised for failing to respond to Mr T’s request and informed him that it did not hold the information he had requested.
4. On 14 March 2014, Mr T 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.
5. The application was validated by establishing that Mr T 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

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6. On 21 May 2014, the investigating officer notified the SPS in writing that an application had been received from Mr T, giving the SPS the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The SPS was asked to explain the steps it had taken to establish that it did not hold the information requested.

7. The SPS responded, explaining that, following further investigation, it had located information falling within the scope of the request. It confirmed that this information had been provided to Mr T. It followed this confirmation with submissions on the searches carried out.

## **Commissioner's analysis and findings**

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8. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr T and the SPS. She is satisfied that no matter of relevance has been overlooked.

### **Information held by the SPS**

9. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This obligation is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
10. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority *should* hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
11. The Commissioner notes the submissions by Mr T, which drew attention to *Decision 108/2012 Mr G and the Scottish Prison Service*<sup>1</sup>. This made reference to the SPS's records management policy, noting that a prisoner's property cards are kept for three years after liberation of the prisoner.
12. The SPS explained the searches and enquiries it undertook to ascertain whether it held any further information falling within the scope of Mr T's request, with a copy of its record of these searches. It confirmed that during the investigation it had identified and located its national policy on records management, which it acknowledged was relevant to the request. It confirmed that it had provided Mr T with a copy.
13. The SPS also confirmed that Edinburgh Prison did not have a local policy on the matter. In an effort to assist Mr T, it had provided him with a copy of a local retention policy which had been operated by Aberdeen Prison, now closed. It submitted that no further information was held.
14. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that (by the close of the investigation) the SPS had carried out adequate searches to ascertain whether any information was held. She is also satisfied that the information located during the investigation has now been provided to Mr T.
15. However, it is evident that adequate searches were not carried out in dealing with Mr T's information request and requirement for review. If they had been, the Commissioner believes the information should have been located at that time. This may have negated the need for Mr T to make an application to the Commissioner.

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201200806.aspx>

16. In failing to take adequate steps to identify, locate and provide the requested information, the SPS failed to comply with section 1(1) of FOISA. In these circumstances, the SPS was incorrect to give Mr T notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

## **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 in responding to the information request made by Mr T. In failing to provide Mr T with all the information it held and which fell within the scope of his request, the SPS failed to comply with section 1(1) of FOISA.

Given that the information held has now been provided to Mr T, the Commissioner does not require the SPS to take any action regarding this failure, in response to Mr T's application.

## **Appeal**

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Should either Mr T 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**  
**19 June 2014**

## 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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