

Decision Notice

Decision 201/2014: Mr S and the Scottish Prison Service

Allocation of gym places

Reference No: 201402005

Decision Date: 16 September 2014



Scottish Information
Commissioner

Summary

On 5 December 2013, Mr S asked the Scottish Prison Service (the SPS) for information relating to the allocation of gym places. The SPS provided some information. The Commissioner carried out an investigation and found that the SPS had failed to provide Mr S with all of the information it held.

Given that all of the information was provided to Mr S during the investigation, the Commissioner did not require the SPS to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 5 December 2013, Mr S made a request for information to the SPS, within a prisoner complaint form submitted to the Internal Complaints Committee. The information requested included the number of places notionally available at each weekly gym session allocated to specific accommodation areas within Edinburgh Prison.
2. On 20 December 2014, the SPS provided Mr S with a response to his complaint. This did not address Mr S's request for information.
3. On 30 January 2014, Mr S wrote to the SPS, requesting a review on the basis that it had failed to respond to his request.
4. The SPS notified Mr S of the outcome of its review on 14 February 2014. It provided him with the total number of gym places allocated to each accommodation area each week.
5. On 11 August 2014, Mr S wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr S stated he was dissatisfied with the outcome of the SPS's review because it had not provided him with the information requested, only an aggregated figure.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr S made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. The case was then allocated to an investigating officer.
7. On 28 August 2014, the investigating officer notified the SPS in writing that Mr S had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this

application and answer specific questions. It was asked to justify its reliance on any provisions of FOISA it considered applicable and, in particular, to explain the steps it had taken to identify and locate the information requested.

9. The SPS responded, confirming that it had identified the specific information sought by Mr S. It confirmed that this had been provided to Mr S on 8 September 2014.

Commissioner's analysis and findings

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

Information held by the SPS

11. 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, 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 relevant in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
13. The Commissioner notes the submissions provided by Mr S, that the SPS did not provide him with the specific information he requested.
14. In its submissions to the Commissioner, the SPS explained that it recognised its handling of the request had been less than ideal. It acknowledged that it was disappointing that the request for information had not been identified within Mr S's complaint form. It explained that it had since started reviewing complaint forms regularly, with a view to identifying any information requests within them.
15. The SPS confirmed that the relevant information was located and provided to Mr S during the investigation. Mr S confirmed receipt of this, and that he considered the information to fulfil his request.
16. Having considered all relevant submissions and the terms of the request, the Commissioner accepts and is satisfied that (by the close of the investigation) the SPS had located and provided to Mr S the information he requested. Clearly, however, it should have been identified and provided earlier.
17. Taking account of all of the circumstances, the Commissioner concludes that the SPS failed to comply fully with section 1(1) of FOISA, by failing (in dealing with Mr S's request and requirement for review) to identify, locate and provide all of the information it held and which fell within the scope of Mr S's request.
18. The Commissioner notes the steps being taken by the SPS with a view to identifying requests within complaints.

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 responding to the information request made by Mr S. In failing to provide Mr S 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 all of the information has now been provided to Mr S, the Commissioner does not require the SPS to take any action regarding this failure, in response to Mr S's information request.

Appeal

Should either Mr S 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

16 September 2014

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.

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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info