

# Decision Notice

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## Decision 013/2016: Mr Kenny Baird and the Scottish Prison Service

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### Health and Safety Qualifications

Reference No: 201501877

Decision Date: 25 January 2016



Scottish Information  
Commissioner

## Summary

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On 4 August 2015, Mr Baird asked the Scottish Prison Service (SPS) for the number of Partnership Liaison Representatives (PLRs) who had completed and currently held Health and Safety certificates. The SPS responded that this information was personal data which was exempt from disclosure. Following a review, the SPS told Mr Baird that it did not hold the information. Mr Baird remained dissatisfied and applied to the Commissioner for a decision. After investigating, the Commissioner accepted that the SPS did not hold any recorded information covered by Mr Baird's request at the time he made his request. She did not require the SPS to take any action.

## Relevant statutory provisions

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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 Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 4 August 2015, Mr Baird made a request for information to the SPS. The information requested was:
  - How many PLRs [Partnership Liaison Representatives] have completed and currently hold the TUC recognised Health and Safety Stage one certificate
  - How many PLRs have completed and currently hold the TUC recognised Health and Safety Stage two certificate
  - How many PLRs have completed and currently hold the TUC recognised Health and Safety Stage three diploma certificate.Mr Baird wished this information broken down by establishment.
2. By way of background, a PLR is appointed by the Prison Officers Association (POA) to fulfil a role within the partnership accord. The Health and Safety certificate stages 1-3 are Trade Union (TU) sponsored courses which enable the PLR to carry out some Health and Safety specific tasks in their TU capacity.
3. The SPS responded on 1 September 2015. It withheld the information under section 38(1)(b) of FOISA, which exempts personal information if its disclosure would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998.
4. On 2 September 2015, Mr Baird wrote to the SPS requesting a review of its decision on the basis that the SPS had taken a full 20 days to respond to his request whilst declining to supply the information. Mr Baird felt that the SPS had been unhelpful and could have told him earlier that it had decided to withhold the information. Mr Baird thought that the SPS had failed in its duty to provide advice and assistance. He asked the SPS to explain why it had taken 20 working days to reply. Mr Baird said that he sought statistical information, not

information capable of identifying employees. He did not think such information should be exempt from disclosure under section 38(1)(b) of FOISA.

5. The SPS notified Mr Baird of the outcome of its review on 6 October 2015. The SPS stated that the request had been handled correctly in accordance with SPS procedures and legislative requirements. The SPS explained that it had required all its establishments to search for the information, and that searches had taken longer than anticipated. The SPS apologised for the delay in responding and (in accordance with section 17 of FOISA) gave Mr Baird notice that it did not hold the information he had asked for. The SPS stated that, although some establishments may be aware of the training which some PLRs had undergone, the training was not a matter of record for the SPS. The SPS suggested that Mr Baird redirect his request to the TU, who may hold these records.
6. On 13 October 2015, Mr Baird applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Baird was dissatisfied as he believed the SPS did hold information falling within his request.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Mr Baird 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.
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 question including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

## Commissioner's analysis and findings

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9. 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 Baird and the SPS. She is satisfied that no matter of relevance has been overlooked.

### Section 17 - information not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case. 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 SPS submitted to the Commissioner that the information Mr Baird requested on 4 August 2015 was not held by the SPS and that section 17 of FOISA applied. The SPS said:  
*"There is no SPS record that can be interrogated or examined to elicit the information requested. This training is specific to Trade Union (TU) duties and is only provided by the TU, not by the SPS. If such records exist it would be kept by our TU partners."*
12. The SPS explained that, in relation to the qualifications, the SPS was not responsible for the provision or the administration of the health and safety training: it was training provided by the TU to enable the TU officials to carry out TU duties. The SPS's Employee Relations and Reward Manager had therefore established that, as expected, the information was not held

on any central record and had asked each prison and youth offender institution in the SPS estate if the information was held locally. The SPS said that some establishments had then asked the PLRs directly for the information.

13. In his application to the Commissioner, Mr Baird specifically questioned whether, and how, the SPS had contacted “all 13 establishments” to receive the same response that no information was held. The SPS confirmed to the Commissioner that all establishments had been contacted and supplied the Commissioner with the initial email in which the SPS’s Employee Relations and Reward Manager asked establishments if they held the information. The SPS also supplied the Commissioner with the responses from each establishment.
14. During the investigation, the investigating officer asked the SPS to verify the responses from some establishments, as it was not clear whether they held any recorded information and, if so, whether this information had been held at the date of Mr Baird’s request or had been obtained while the SPS was preparing its response to that request. The SPS contacted the specified establishments and supplied the subsequent responses to the Commissioner. It became clear that, where information about PLR training had been provided, the information had come into the possession of the SPS only after contacting the individual PLRs to ask about their training.
15. The SPS confirmed that it had checked personnel files and training records which established that it did not hold recorded information about the PLR Health and Safety certificates. The SPS was asked if there was any legal or good practice requirement on the SPS to hold such recorded information. The SPS responded that the training is specifically to allow the PLRs to function as required on TU business. There is no requirement for the SPS to record the training details of another body.
16. Mr Baird suggested that a TU representative would have to record their daily activities and submit these to the HR manager on a monthly basis and this report would indicate time spent on training courses. Mr Baird said:  
  
*“It is inconceivable that SPS will allow trade union reps to freely come and go as they please without any knowledge of their where about or accountability and this includes time spent away from work at training courses.”*
17. The SPS replied that it records role specific SPS training, which the SPS either provides directly or by third party providers. TU training is provided and paid for by the TU. The SPS said it complies with the ACAS code of practice #3 which allows for “*Time Off For Trade Union Duties and Activities*”, but the SPS has no input into those activities and cannot be responsible for recording activities of which they have no knowledge.
18. Mr Baird said that all SPS staff must have their daily hours recorded on a “SHAR” sheet and this also has provision to indicate training. In response to this point, the SPS said a SHAR sheet does not record TU training. The establishment and staff training records are where SPS training is recorded, and this does not include TU training which the TU should record.
19. The SPS reiterated that its Employee Relations and Reward Manager asked the prison establishments if the information requested might be held locally. Some establishments had then asked the local PLRs for the information. The SPS confirmed that, at the time the request was received, no information was held, and that it had responded appropriately in terms of section 17 of FOISA. The SPS concluded that, although some very limited information has since been provided through direct contact with the PLRs, it was not held at

the time of the request and the limited information now available could not be verified without presentation of the certification documents.

20. Having considered all the above submissions, the Commissioner is satisfied that the SPS did not hold the information covered by Mr Baird's request at the time he made the request. The Commissioner recognises that the SPS subsequently obtained some information that fell within Mr Baird's request, but accepts that this information was obtained after Mr Baird's request was received. In terms of section 1(4) of FOISA, the information to be provided is that held by the public authority at the time the request is received.
21. The Commissioner finds that, at review, the SPS properly gave notice to Mr Baird that it did not hold recorded information covered by his request, as required by section 17(1) of FOISA.

## Decision

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

## Appeal

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Should either Mr Baird or the SPS 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**

**25 January 2016**

## Appendix 1: Relevant statutory provisions

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### 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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(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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#### 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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