

Decision Notice

Decision 142/2018: Mr H and the Scottish Prison Service

Complaints about nepotism: failure to respond within statutory timescales

Reference No: 201801308

Decision Date: 6 September 2018



Scottish Information
Commissioner

Summary

Mr H asked the Scottish Prison Service (the SPS) for information about complaints it had received about nepotism.

This decision finds that the SPS failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
22 May 2018	Mr H made an information request to the SPS.
	The SPS acknowledged his email but did not respond to the information request.
21 June 2018	Mr H wrote to the SPS requiring a review of its failure to respond.
	Mr H did not receive a response to his requirement for review. Again, the SPS acknowledged his email but did not respond to his requirement for review.
6 August 2018	Mr H wrote to the Commissioner's Office, stating that he was dissatisfied with the SPS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
31 August 2018	The SPS was notified in writing that an application had been received from Mr H and was invited to comment on the application.
5 September 2018	The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

1. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the SPS did not provide a response to Mr H's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the SPS did not provide a response to Mr H's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. In its submissions, the SPS acknowledged that it had failed to respond to Mr H's information request and his requirement for review. The SPS explained that it had failed to record the initial request and, while it did receive the request for review and had prepared a response, this response was never sent. The SPS considers that this may have been due to staff absence.
6. As the SPS responded to Mr H's requirement for review on 5 September 2018, the Commissioner does not require it to take any further action in relation to Mr H's application.
7. The Commissioner notes that the SPS has apologised to Mr H for its failures to comply.

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 H. In particular, the SPS failed to respond to Mr H's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of these failures, in response to Mr H's application, given that a response has now been issued.

Appeal

Should either Mr H 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.

Alison Davies
Deputy Head of Enforcement

06 September 2018

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