



Scottish Information
Commissioner

Decision 051/2005 – Mr B and the Scottish Prison Complaints Commission

*Various requests for information relating to the work of the Scottish Prison
Complaints Commission*

Applicant: Mr B
Authority: The Scottish Prison Complaints Commission
Case No: 200502374
Decision Date: 21 November 2005

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Decision 051/2005 – Mr B and the Scottish Prison Complaints Commission

Various requests for information relating to the work of the Scottish Prison Complaints Commission – information not held (section 17) – information exempt under section 27 (future publication).

Facts

Mr B, an inmate at Peterhead Prison, contacted the Scottish Prison Complaints Commission (SPCC) with a list of 10 questions relating to the activities of the Commission.

The SPCC's reply provided answers to several of these questions but advised Mr B that some of the information he had asked for was not held by the SPCC in recorded format. It did, however, endeavour to provide this information. Mr B was also informed that some of the information he had requested would be found in the Annual Report due to be published shortly and made available in the prison library.

Mr B was dissatisfied with the SPCC's response and applied to the Scottish Information Commissioner for a decision in terms of section 47 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Outcome

The Scottish Information Commissioner found that generally the SPCC had complied with FOISA in its response to Mr B's requests and had provided him with whatever information it held in relation to his requests. However, in respect of one of Mr B's requests (the Commissioner's speaking/lecturing engagements) the SPCC had failed to publish the full details requested in its Annual Report as indicated in its response to Mr B. As a result the Scottish Information Commissioner found that the exemption in section 27 of FOISA had been incorrectly cited by the SPCC. The SPCC has now offered to provide Mr B with full details relating to his request.



Appeal

Should either Mr B or the Scottish Prison Complaints Commission wish to appeal against the Scottish Information Commissioner's 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 of receipt of this notice.

Background

1. On 18 July 2005 Mr B wrote to the Scottish Prisons Complaints Commission with a list of 10 questions about the activities of the Commissioner and his staff.
2. In his reply of 26 July the Commissioner provided answers to five of Mr B's questions and noted that his forthcoming Annual Report, due to be published and made available in prisons within a few weeks, would answer a further question about the Commissioner's speaking/lecturing engagements. In relation to another three of Mr B's questions the Commissioner explained that the SPCC did not hold the information required in recorded format, but he attempted to answer the questions based on his own and his staff's experience and knowledge of the SPCC's activities. The Commissioner asked Mr B to provide further information to help him respond to question 2 (in relation to the provision of legal advice to the Commission).
3. Mr B wrote to the SPCC on 1 August 2005, asking for the response to his questions 1, 3, 8 and 9 to be reviewed. He provided further information relating to question 2.
4. On 9 August 2005 the SPCC wrote back to Mr B, providing additional background information to help explain the replies in its previous letter but maintaining that the specific information requested by Mr B in question 3 was not held in recorded format.
5. The questions which Mr B asked to be reviewed, and which will be considered in this Decision Notice, are those originally numbered 1, 3, 8 and 9 in his request of 18 July 2005. These are:



1) How many employees of the Commission (including the Commissioner) are members of professional bodies such as would entitle the individual to practise law in Scotland, or any other United Kingdom or European Convention jurisdiction?

3) Which seminars attended by Commission staff between 1 July 2004 and 30 June 2005 might be said to have contributed to staff training and development needs and what was the cost (in fees and expenses) of attending each of those events?

8) Please provide a list of the Commissioner's speaking / lecturing engagements for the period 1 July 2004 to 30 June 2005, citing host organisation, location, lecture title / subject , and date.

9) How many individual complaints were received by the Commission from Peterhead (not being 'medical' complaints) in cases where prisoners had exhausted either the 'CP1', 'CP2', or 'CP4' internal mechanisms (including 'CP2' complaints not deemed by prison management to be appropriately submitted under the 'confidential access' procedure) during the period 1 July 2004 to 30 June 2005?

6. The SPCC had answered Mr B along the following lines:

1) There is no requirement for the Scottish Prisons Complaints Commissioner to have a background in law, and the Commissioner is not allowed to practice law or any other profession whilst holding the post of Commissioner. The current Commissioner has qualified as a barrister and solicitor in Canada. The Commissioner intends to amend wording in one of his brochures which may have misled Mr B on this point, when further brochures are published.

3) The information requested is not held in recorded format. No fees or expenses were paid for staff training and development. Staff discuss relevant seminars with the Commissioner and enter the dates in their own calendars once he has given approval. The Commissioner listed three seminars which had been attended staff.

8) A list of the Commissioner's engagements would be found in the SPCC's Annual Report, due to be published shortly. The Commissioner undertook to provide every prison with a copy of the report. The Commissioner cited section 27 of FOISA which exempts information if a public authority expects it to be published not later than 12 weeks after the date on which it is requested.



9) The SPCC does not distinguish between CP1, CP2 or CP4 complaints in its record keeping and therefore does not hold the information requested in recorded format. However, between 1 April 2004 and 31 March 2005 the SPCC received 115 complaints from Peterhead, 79 of which were within their jurisdiction.

In his letter of 1 August 2005 Mr B advised that he had not asked the SPCC to distinguish between the various categories of complaint, but wanted to know the total number of the relevant complaints referred to the SPCC within the specified period. He further complained that the statistics provided did not relate to the period he had specified. In its letter of 9 August the SPCC agreed to send Mr B additional statistics to cover the period April to June 2005.

7. Mr B applied to me for a decision on 11 August 2005 and the case was allocated to an investigating officer. Because of difficulties in obtaining copies of all the correspondence between Mr B and the SPCC, the application was not validated until 21 September 2005.
8. It was noted that question 2 from Mr B's list could not be considered in this Decision Notice as the SPCC had not been asked to review its initial response to this question. The SPCC had originally requested further information from Mr B in order to answer this question. After Mr B had provided clarification the SPCC had replied to question 2 in its letter of 9 August 2005. However, Mr B did not then ask the SPCC to review its response to question 2. Mr B has already been advised that I cannot consider the response he received to question 2 within this Decision Notice.

Investigation

9. Mr B's appeal was validated by establishing that he had made a request for information to a Scottish public authority (i.e. the Scottish Prison Complaints Commission) and had appealed me only after requesting the authority to review its response to his request.
10. A letter was sent to the Scottish Prison Complaints Commissioner on 14 October 2005, informing him that an appeal had been received and that an investigation into the matter had begun.



11. The SPCC was asked:
 - a) in relation to question 1, whether information about legal qualifications held by other members of staff at the SPCC might be held?
 - b) in relation to question 3, for confirmation that staff attending the seminars listed in the reply to Mr B had not submitted any expenses claims. The SPCC was asked whether it was possible to provide copies of booking forms or publicity material which would confirm that there was no charge for attending these seminars.
 - c) in relation to question 8, the SPCC was asked to confirm that a copy of the Commissioner's Annual Report was now available to prisoners in Peterhead.
 - d) in relation to question 9, the SPCC was asked for a short explanation of the complaints mechanisms referred to in the correspondence, and whether the figures supplied to Mr B excluded medical complaints, as he had requested.
12. The Scottish Prison Complaints Commissioner discussed this request in a phone call to the investigating officer on 20 October 2005. He explained that there were only 3 members of staff in his office, which had a bearing on the way in which it had been established that some of the information requested by Mr B was not held in recorded format. The SPCC followed this phone call with a letter dated 31 October 2005, which provided the following information:
 - a) with regard to question 1, after discussion with his staff the Commissioner confirmed that he alone held professional legal qualifications.
 - b) with regard to question 3, the courses attended by SPCC staff were offered by the Scottish Executive and there were no costs incurred by the SPCC. The SPCC provided documentary evidence from the Scottish Executive in support of this point.
 - c) with regard to question 8, the SPCC confirmed that the Commissioner's engagements were listed in the Annual Report and that a copy had now been deposited in the library at Peterhead prison. However, examination of the Annual Report established that not all the information sought by Mr B under this question was contained there: when this was raised with him, the SPCC provided the information and confirmed that it would be passed on to Mr B.
 - d) with regard to question 9, the SPCC confirmed that the statistics supplied to Mr B did not include medical complaints ('CP3') and that a full answer on this issue had been sent to Mr B in previous correspondence.



The Commissioner's Analysis and Findings

13. The SPCC has demonstrated that it has provided Mr B with any recorded information held which might answer his information requests. Where it has claimed that information is not held in recorded format, the SPCC has been able to substantiate this.
14. The SPCC has gone further than FOISA requires in providing Mr B with information which is not held in recorded format but has been gathered through interviews with members of staff. By doing this, the SPCC has fully complied with the requirement in section 15 of FOISA to provide applicants with advice and assistance.
15. However, I find that the SPCC was wrong to apply the exemption in section 27 of FOISA ("Information intended for future publication") to the information requested by Mr B in question 8. The Annual Report gives only a general overview of the Commissioner's engagements for the previous year and does not contain the specific detailed information requested by Mr B.
16. The SPCC has acknowledged that the Annual Report does not provide the level of detail about the Commissioner's engagements that Mr B requested. The SPCC has now offered to provide Mr B with full details, and I accept that there was no intention to withhold this information from Mr B.

Decision

I find that generally the Scottish Prisons Complaints Commission (SPCC) has dealt with Mr B's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).

However, I find that the SPCC failed to comply with Part 1 of FOISA in claiming exemption under section 27 of FOISA in respect of information about the Commissioner's speaking/lecturing engagements. I require the SPCC to provide Mr B with full details of these engagements and note that the SPCC has already undertaken to do so. I require the SPCC to provide Mr B with this information within two months of the date of this Decision Notice.



Kevin Dunion
Scottish Information Commissioner
21 November 2005