

Decision Notice



Decision 014/2013 Mr W and the Scottish Prison Service

SPS Relationships Programme

Reference No: 201201652

Decision Date: 12 February 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

Mr W asked the Scottish Prison Service (the SPS) for information about its Relationships programme. The SPS provided Mr W with some information, but advised that it did not hold the remaining information he had asked for. Further information was located by the SPS, and disclosed to Mr W, during the investigation, but the Commissioner also accepted that the SPS did not hold some of the information Mr W had requested.

Relevant statutory provisions

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

1. On 1 June 2012, Mr W wrote to the SPS, requesting the following information about its Relationships programme:
 - a) the year of the programme design;
 - b) who the programme is for;
 - c) what the intended outcomes are;
 - d) how the programme will achieve these outcomes;
 - e) the programme designer(s) / author(s);
 - f) independent evaluation and outcome data;
 - g) theory manual; and
 - h) SPS Circular No 11/1996.



2. The SPS responded on 29 June 2012. It provided Mr W with information relating to requests a) to e), and notified him, in terms of section 17(1) of FOISA, that it did not hold any information regarding requests f) and g). With regard to request h), the SPS advised Mr W that it could not identify the exact circular he had requested, indicating that it might be helpful if he could say what the circular was about. The SPS noted that it had a record of a notice 11A/96 Prisoner Complaints Procedure, which was no longer in force as it had been subsumed by the newly amended complaints procedure.
3. On 6 July 2012, Mr W wrote to the SPS requesting a review of its decision. In this letter, Mr W queried the SPS' response to requests b), c) and d). With regard to requests f) and g), Mr W did not accept that the information was not held and provided arguments supporting his view. With respect to request h), Mr W confirmed that the circular he was seeking was 11A/96.
4. The SPS notified Mr W of the outcome of its review on 17 July 2012. In its review response, the SPS upheld its previous decision with regard to requests b) to d) and f) to g). With regard to request h), the SPS notified Mr W that while Circular 11A/96 was still recorded on its register, it was no longer available as it had been superseded.
5. On 30 August 2012, Mr W wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr W had made a request for information to a Scottish public authority and had 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

7. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions
8. Subsequent references to submissions requested and received from the SPS in this decision are references to those sought and received from the Ministers' Freedom of Information Unit on behalf of the SPS.
9. The SPS was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, and to provide details of the searches it had undertaken to determine that it did not hold certain information.



10. In its response to this letter the SPS agreed to disclose further information to Mr W in relation to requests b), c) and d), and provided submissions explaining why it held no information covered by requests f), g) and h).
11. The relevant submissions received from both the SPS and Mr W will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Section 1(1) of FOISA – General entitlement

13. Section 1(1) of FOISA creates a general entitlement to access information held by a Scottish public authority. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless the information is exempt from disclosure under Part 2 of FOISA, or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
14. The SPS provided Mr W with information regarding requests a), b), c), d) and e), and advised him that it held no information regarding requests f), g) and h). Mr W appears to have accepted the SPS's response in relation to requests a) and e), and they are not considered in this decision.
15. Mr W was not satisfied with the SPS's response to his other requests, and set out the terms of his dissatisfaction in his application to the Commissioner.
16. With regard to request b), Mr W argued that the SPS must hold information on who the Relationships programme is designed for, and he rejected the arguments put forward by the SPS that it was suitable to any offender.
17. With regard to request c), Mr W argued that the SPS had not provided him with any information as to the intended outcomes of the programme.
18. With reference to request d), Mr W argued that he was initially advised that the programme outcomes would be measured by "question and answer", but when he queried this statement in his request for review, the SPS replied that it did not understand what he meant by "question and answer". Mr W maintained that the methods used were not clearly stated in the SPS's response to him.
19. Mr W also questioned the SPS's response to requests f), g) and h), where it had advised him that it did not hold any information. This will be considered later in the decision.



20. During the Commissioner's investigation, it became clear that the SPS held additional information regarding requests b), c) and d) which it had not yet disclosed to Mr W, and to which it had not applied any of the exemptions provided in Part 2 of FOISA.
21. After further correspondence and questioning, the SPS eventually provided Mr W with part of a document that fell within the scope of request b). The SPS also provided Mr W with a document containing information of relevance to requests c) and d).
22. Since it is clear that the SPS failed to identify and supply this information to Mr W until after he had applied to the Commissioner, the Commissioner finds that, in this respect, the SPS failed to comply with section 1(1) of FOISA when responding to Mr W's information request.

Section 17(1) – Information not held

23. Under section 17(1) of FOISA, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect. In this case, the SPS notified Mr W that it did not hold any information covered by requests f), g) and h).
24. In his application to the Commissioner, Mr W raised several queries regarding the SPS's response to requests f), g) and h).
25. With regard to request f), Mr W argued that the SPS must hold independent evaluation and outcome data, asking how it was possible to have put forward the programme without an independent appraisal; programmes must have an appropriate evaluation framework.
26. Similarly, with regard to request g), Mr W argued that every programme must have a theory manual providing a description of the theoretical basis for the programme and model of change, and he did not accept that the SPS did not hold this information.
27. With reference to request h), Mr W argued that the information he had requested was held by the SPS because they had acknowledged that the contents of Circular 11A/96 had been included or absorbed into its newly amended complaints procedure. Mr W stated that he sought a copy of the Circular which describes the objectives and operation of the SPS prisoner's complaints procedure.
28. In order to determine whether the SPS dealt correctly with parts f), g) and h) of Mr W's request, the Commissioner must be satisfied as to whether, at the time it received Mr W's request, the SPS held any information which would fall within the scope of these parts of his request.



Request f)

29. With regard to request f), the SPS was asked whether it held any independent evaluation and outcome data regarding the Relationships programme, and what searches it had undertaken to locate such information. In its submissions, the SPS advised that the Relationships programme was not an accredited programme, but was instead considered to be an “approved activity”. The SPS explained that accredited programmes are subject to the scrutiny of an Accreditation Panel and would be expected to have an evidential basis to demonstrate that behavioural change would occur once participants had completed the programme. However, the SPS considered the Relationships programme to be an “approved activity”, with an educational/awareness outcome, not an accredited programme. The SPS submitted that, as the Relationships programme was an approved activity, it was not subject to independent appraisal, in accordance with SPS policy. The SPS noted that Mr W seems to have interpreted “approval” as implying some external or independent analysis of the activity, but that this was incorrect.
30. The Commissioner has considered the arguments submitted by the SPS and Mr W’s concerns, and she is satisfied that the Relationships programme is not an accredited programme but an “approved activity”, which is not subject to the same rigours of independent testing and evaluation. In light of this, she accepts that the SPS did not need to conduct any additional searches to determine that it did not hold the information covered by part f) of Mr W’s request, and that the SPS had correctly given Mr W notice that it did not hold the information, as required by section 17(1) of FOISA.

Request g)

31. With regard to request g), the SPS was asked to confirm whether theory manuals are only held for accredited programmes, and whether any searches had been undertaken to determine whether a theory manual was held for the Relationships programme (and, if not, to explain why). In its submissions, the SPS confirmed that theory manuals are only produced for accredited programmes (although it added that it should not be assumed that a theory manual exists for all accredited programmes). The SPS also noted that, on receipt of Mr W’s initial request, the person who had been delivering the programme at the prison for some time was consulted and had confirmed that no theory manual existed for the Relationships programme. The SPS advised that no further searches were undertaken due to the understanding that theory manuals are not produced for “approved activities” and its in-house knowledge of the history and nature of the programme itself.
32. Given the submissions and explanations provided by the SPS, the Commissioner accepts that a theory manual was not produced for the Relationships programme, and has not required the SPS to conduct any further searches for this information. In view of the explanation given by the SPS, the Commissioner accepts that there would be little value in developing a theory manual for the Relationships programme, given that it was an “approved activity” rather than an accredited programme subject to external scrutiny and evaluation. In the circumstances, the Commissioner finds that the SPS correctly notified Mr W that a theory manual did not exist and therefore that it did not hold this information.



Request h)

33. With regard to request h), the SPS was asked for details of the searches it had undertaken to determine that it did not hold a copy of Circular No 11/1996. The SPS noted that the Circular in question was 16 years old and had been superseded by the new complaints procedures, which were available to prisoners via information leaflets and notices. The SPS explained that all circulars and policy documents are held in the SPS sharepoint site. The SPS provided the Commissioner with a document to demonstrate how circulars are held and noted that it had twice undertaken searches of its sharepoint site but had found no relevant information.
34. The Commissioner has considered the explanations provided by the SPS and has noted the searches undertaken and, on the basis of this evidence, accepts that the SPS does not hold the Circular requested by Mr W. In reaching this view, the Commissioner has taken into account the fact that the requested circular has been superseded by a new complaints procedure and is now obsolete, so the SPS has no reason to retain any copies in its sharepoint system.
35. The Commissioner notes that, when first responding to his request, the SPS advised Mr W that Circular No 11/1996 had been subsumed by the newly amended complaints procedure. In his request for review, Mr W reiterated that he wished to receive a copy of this particular circular. The Commissioner takes the view that, in doing so, Mr W made it clear that he did not wish to receive information from the complaints procedure which had subsumed Circular No 11/1996, but was only interested in receiving information from the obsolete Circular itself.
36. The Commissioner is therefore satisfied that the SPS correctly gave Mr W notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of requests f), g) and h).



DECISION

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

The Commissioner finds that the SPS complied with Part 1 of FOISA by providing Mr W with information covered by requests a) and e), and by notifying him (in accordance with section 17(1) of FOISA) that it did not hold any information with respect to requests f), g) and h).

However, the Commissioner finds that the SPS failed to provide Mr W with certain information covered by requests b), c) and d), and, in this respect, failed to comply with section 1(1) of FOISA.

Given that the SPS provided Mr W with the information during the investigation, the Commissioner does not require SPS to take any further action in respect of this failure.

Appeal

Should either Mr W or the Scottish Prison Service wish to appeal against this 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
12 February 2013



Appendix

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.
- ...