

Decision Notice



Decision 015/2012 Mr T and the Scottish Prison Service

Failure to respond

Reference No: 201102276

Decision Date: 26 January 2012

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
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Summary

This decision considers whether the Scottish Prison Service (SPS) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr T.

Background

1. In a letter dated 5 September 2011, Mr T (a prisoner) wrote to a named SPS employee working within the same prison requesting information in relation to the canteen within that establishment. Mr T has indicated that he handed this letter, in an addressed envelope marked "INTERNAL" and "FOISA" to another SPS employee on 6 September 2011.
2. On 12 October 2011, Mr T received a letter from the Royal Mail enclosing his letter dated 5 September 2011 and the envelope used to address this letter, since it had been posted without payment of postage costs. Mr T received no response to his request for information from the SPS.
3. On 15 October 2011, Mr T wrote to the Chief Executive of the SPS requesting a review of its failure to provide a response to his request. Mr T highlighted that his letter intended to be treated as internal mail had been posted, and he enclosed a copy of his original request, the covering envelope and the envelope from the Royal Mail with his request for review.
4. Mr T did not receive a response to his requirement for review and, on 31 November 2011, he wrote to the Commissioner expressing his dissatisfaction and applying for a decision, in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr T had made his 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 failure to respond to that request. The case was then allocated to an investigating officer.

Investigation

6. The SPS is an executive agency of the Scottish Ministers ("the Ministers") and, in line with agreed procedures, on 12 December 2011 the Ministers were notified in writing that an application had been received from Mr T and were invited to comment on the application.



7. 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.
8. On 4 January 2012, the SPS responded to the investigating officer's letter and provided a copy of its response to Mr T's request for information, which had been issued to him on 14 December 2011.
9. In its submissions to the Commissioner, the SPS stated that it had no record of receiving Mr T's request dated 5 September 2011 but it did receive his request for review on 27 October 2011. The SPS acknowledged that it did not comply with the required timescales. It explained that this was an unintentional oversight and steps had been taken to ensure requests are efficiently logged and prioritised in future.
10. The investigating officer asked further questions to check the position concerning whether the SPS received Mr T's request dated 5 September 2011, in the light of comments in Mr T's application suggesting that he had handed his letter requesting information to an SPS employee, and the fact that this had subsequently been posted.
11. In response, the SPS commented that there was no evidence to support Mr T's assertion that his letter had been handed to a SPS employee, but it noted that within the prison there are internal and external mail boxes which are sorted by SPS staff. In considering the facts of this case the SPS confirmed that it did receive the request as the envelope had been clearly marked 'internal' but the letter had been inadvertently placed in the external post system at the point of sorting.
12. The SPS apologised for this oversight and provided the investigating officer with a copy of an advice notice issued to staff within the prison, to remind them that if a request for information is received internally this should be forwarded to a named SPS employee.

Commissioner's analysis and findings

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in either of these cases.
14. The SPS acknowledged that it had received Mr T's request but had inadvertently placed it in the external post system and so did not recognise the request or provide a response in the required timescales.
15. Given that the SPS did not respond to Mr T's request dated 5 September 2011, the Commissioner finds that the SPS failed to respond to Mr T's request for information within the 20 working days allowed by section 10(1) of FOISA.



16. The Commissioner notes following the commencement of the investigation, the SPS has advised all staff at the prison to be aware that information requests received internally should be passed to a named SPS employee within the prison. The Commissioner welcomes the steps taken by the SPS to reduce the risk of technical failings arising as a result of similar errors in the future.
17. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in either of these cases. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
18. The Commissioner finds that the SPS failed to deal with Mr T's requirements for review within the 20 working days required by section 21(1) of FOISA.
19. As the SPS has now dealt with Mr T's requirement for review (and did so promptly following the commencement of the Commissioner's investigation), the Commissioner does not require any further steps to be taken in relation to these particular failures.

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), by failing to respond to Mr T's request for information within the timescale required by section 10(1) of FOISA and by failing to comply with Mr T's requirement for review within the timescale required by section 21(1) of FOISA.

As the SPS has now dealt with Mr T's requirement for review, the Commissioner does not require any further steps to be taken in respect of these failures in response to Mr T's application.



Appeal

Should either Mr T 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.

Claire Sigsworth
Deputy Head of Enforcement
26 January 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

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