

Decision Notice



Decision 041/2013 Mr G and the Scottish Prison Service

MAPPa Guidance

Reference No: 201202620
Decision Date: 8 March 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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Summary

Mr G asked the Scottish Prison Service (SPS) for a copy of the MAPPA 2012 National Guidance and any subsequent amendments to it. The SPS advised Mr G that, as the item was already accessible to him in the prison library, the SPS was not obliged to provide him with a copy under FOISA.

Following an investigation, the Commissioner found that Mr G did not have “reasonable access” to the information at this time, and it had been wrongly withheld under section 25(1) of FOISA. The Commissioner does not require the SPS to take any further action as it gave a copy of the Guidance to Mr G during the investigation.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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 12 September 2012, Mr G wrote to the SPS requesting a complete copy of the MAPPA [Multi-Agency Public Protection Arrangements] 2012 National Guidance and any subsequent amendments to it.
2. The SPS responded on 11 October 2012. It relied on section 25(1) of FOISA, telling Mr G that as the information was publicly available and easily accessible from the prison library, the SPS was not required to provide it in response to his request
3. On 15 October 2012, Mr G wrote to the SPS requesting a review of its decision. In particular, Mr G questioned the SPS's interpretation of section 25 of FOISA.
4. The SPS notified Mr G of the outcome of its review on 9 November 2012, which upheld its reliance on section 25 of FOISA and explained how Mr G could access the information in the prison library and through a short-term loan.



5. On 10 December 2012, Mr G wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's 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 G 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 Ministers were notified in writing that an application had been received from Mr G and that an investigation into the matter had commenced. The Ministers were given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and were asked to respond to specific questions.
8. Subsequent references in this decision to submissions requested and received from the SPS are references to those sought and received from the Ministers' Freedom of Information Unit on behalf of the SPS.
9. During the investigation, the SPS confirmed that it no longer wished to rely on section 25 as it had decided to provide a copy of the MAPPa Guidance Manual to Mr G. The SPS explained that this was considered to be all the remaining information falling within the scope of the request. A search of the SPS SharePoint site had identified no further amendments and this finding was confirmed by "policy colleagues".
10. Having confirmed that he had received a copy of the MAPPa Guidance, and that this information satisfied his request, Mr G indicated that he still required the Commissioner to issue a decision on whether, in terms of FOISA, the SPS had been correct to respond to his request as it had done.
11. The relevant submissions received from both the SPS and Mr G 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 the submissions made to her by both Mr G and the SPS and is satisfied that no matter of relevance has been overlooked.



Section 25 – Information otherwise accessible

13. In terms of section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
14. Initially, and at review, the SPS responded that the information sought by Mr G was exempt from disclosure in terms of section 25(1) of FOISA, as the MAPPA Guidance was held in the prison library and therefore reasonably accessible to him and any other prisoner who attended the library. At review, the SPS also referred to the short loan facility available to Mr G. The key question to be considered in relation to Mr G's request is therefore whether, under these arrangements, the information was reasonably accessible to him.
15. The SPS stated at review, and to the Commissioner, that:
 - There was more than one copy of the information requested available in the prison library;
 - There was access to these copies within the library and on short-term loan. The SPS commented to the Commissioner: "Mr G accepts this, but has not asked to borrow it on that basis";
 - Mr G could attend the library on a Monday from 10.45 - 11.30 and also on a Wednesday from 2.45 - 3.30. The SPS commented that Mr G did not take the opportunity to attend the Prison Library on Wednesdays of certain specified weeks;
 - Mr G also had the option to pay for photocopies. The SPS did not explain whether such a facility was a discretionary facility, or whether any copyright restrictions might apply.
16. Mr G's submissions were similar to those considered by the Commissioner in *Decision 005/2013 Mr G and the Scottish Prison Service*¹, of which Mr G was also the applicant. Mr G argued that the exemption in section 25(1) of FOISA had been wrongly applied and that the information was not reasonably obtainable from the prison library, for the following reasons.
 - He could not get the information to keep as his own copy: the information was either to be inspected in the library or borrowed on a short-term loan.
 - There were restrictions on the short-term loan. For example, he could only have an overnight loan on one day of the week. If he wanted the document on the weekend, he had been told that he must arrange with a member of staff for them to be responsible for the document. Mr G stated that as he "was not privy to Hall staff rota, that could be problematic." Mr G pointed out that if the prison library were not open on Friday, the information would not be delivered.
 - He had been told that the material could only be loaned out once on short term loan, but the reasons for this were not explained.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2013/201201759.asp>



- He had access to the prison library three Mondays out of four, and the 45 minutes allocated for such access did not extend to the full time because of movement between the library, work place and prison halls. The library access period was reduced when the library was shut for staff or public holidays.
- He did not have access to the library on Wednesday afternoons as he was involved in group work.

Was the information reasonably obtainable?

17. The Commissioner first considered what could be established about Mr G's access to the prison library.
18. Both the SPS and Mr G agree that he is allocated 45 minutes in the prison library on Mondays. As stated in *Decision 005/2013*, the Commissioner has no way of determining whether or not this amounts to a full 45 minutes every week, or twice a week, as there are no timesheets or log in forms recorded for library visits.
19. There is less of a consensus on whether Mr G can obtain library access for 45 minutes on Wednesday afternoons. The SPS stated that this access was not used by Mr G over several weeks in October 2012. Mr G has explained that he attended a course on the afternoon that his prison block had an allocated library visit.
20. Regardless of the time Mr G may or may not have had to spend in the prison library each week, the Commissioner notes that the SPS has argued that Mr G could request a short term loan of the MAPPa Guidance, as stated in the SPS's review response. Mr G's application to the Commissioner indicates his awareness of this facility, albeit that he questions whether short-term loan facility actually makes the information reasonably obtainable.
21. The Commissioner's understanding of the short-term loan facility (for the prison in question, and as the loan operated at the time of Mr G's request and request for review) is based on the submissions received in previous cases, including the case referred to above (in paragraphs 16 and 18) and *Decision 104/2012 Mr W and the Scottish Prison Service*². She understands that the period of the short-term loan would be decided by the librarian, depending on the demand for the requested loan item, and would usually be for between two and seven days. The request for a short-term loan would be made by the prisoner to the librarian. There were no forms to fill in and approval would be immediate. Each request for a short term loan was to be considered on its merits and therefore repeat loans were possible.
22. However, the Commissioner notes that this does not correspond with Mr G's understanding of the short-term loan facility, particularly in relation to the period over which items could be borrowed and the possibility of obtaining a repeat loan of the same item.
23. In *Decision 005/2013*, the Commissioner stated (at paragraph 37):

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201200673.asp>



“The Commissioner takes the view that, if Mr G had been able to borrow the ICM Manual and Folder through regular short term loan requests, the information would have been reasonably accessible to him and exempt under section 25(1) of FOISA. However, as noted previously, Mr G had asked about the possibility of a loan and the SPS failed to advise him that this could be arranged. Without that knowledge, Mr G could not access the information through a short term loan and was only able to access it during his library sessions, which were not long enough or frequent enough to make the information reasonably accessible. Furthermore, when, during the investigation, Mr G found out about the possibility of a short term loan, he was told that he could only have a single short term loan of the ICM Guidance Manual and Folder, which would not have been sufficient to make the information “reasonably accessible” to him. The Commissioner finds that, in the circumstances of this case, the information was wrongly withheld under section 25(1) of FOISA.”

24. In *Decision 005/2013* (also at paragraph 37), it was stated:

“...he was told that he could only have a single short term loan of the ICM Guidance Manual and Folder, which would not have been sufficient to make the information “reasonably accessible” to him.”

The question is whether, at the time of his request or the review of the response to that request, Mr G was restricted to a single short-term loan of the MAPPa Guidance. If that were the case, the Commissioner (in line with *Decision 005/2013*) would have to find that the MAPPa Guidance was not reasonably accessible to Mr G. If, however, that was not the practice, the Commissioner accepts that this would strengthen the argument that the MAPPa Guidance was reasonably accessible to Mr G.

25. During the investigation which led to *Decision 005/2013*, the Commissioner raised the issue of a “one off” short-term loan with the SPS. The SPS confirmed that for certain information (not the MAPPa Guidance), Mr G was provided with a short loan (of 24 hours) of a document on 27 November 2012. Upon returning the document, Mr G was informed that a further period of short loan would not be available. The SPS acknowledged that this was the practice at the prison which housed Mr G, but that it was not the practice across all SPS prisons. The SPS noted, on 14 December 2012 in an email to the Commissioner, that the prison in question had since reviewed this practice and that limitations on the number of short-term loans of a single item will now cease, and further loan periods will be available subject to demand.
26. It appears that, at this date (27 November 2012), Mr G would not have been able to arrange more than one short-term loan of the MAPPa Guidance, had he wished: the decision to allow more than a single short-term loan had not yet been implemented in the prison. It would also appear to the Commissioner that Mr G was aware that this was the case: indeed, he refers to this restriction in his application to the Commissioner of 10 December 2012.
27. The Commissioner therefore considered whether, in terms of the complexity and size of the MAPPa Guidance, a single short term loan, together with Mr G’s allocated library time, would be sufficient to make the information reasonably accessible.



28. The SPS did not provide details about the size or complexity of the MAPPA Guidance, but the Commissioner understands it to be the MAPPA National Guidance, which is published on the Scottish Government's website³; as a prisoner, Mr G does not have access to the Internet. This document comprises over 200 pages. Whether or not Mr G was able to spend all of his allocated 45 minutes in the library, the Commissioner is not persuaded that one (or even two) library sessions a week would be sufficient for him to study and take notes from the MAPPA Guidance.
29. As stated above, the Commissioner takes the view that if Mr G had been able to borrow the MAPPA Guidance through regular short term loan requests, the information would have been reasonably accessible to him. The Commissioner understands that this is now the case. However, the Commissioner finds that, in the circumstances existing at the time of Mr G's request and request for review, the information was wrongly withheld under section 25(1) of FOISA.
30. As the SPS has supplied a copy of the MAPPA Guidance to Mr G, the Commissioner does not require any action in respect of this breach of FOISA.

Further Comment

31. This decision considers whether the SPS complied with Part 1 of FOISA in dealing with a specific request by Mr G. As the Commissioner has stated on many occasions, each case will be decided on its particular facts and circumstances. The Commissioner notes that some of the SPS's procedures in terms of short-term loans at the prison in question have changed since the date of Mr G's request and review. As stated above, the Commissioner takes the view that, if Mr G had been able to borrow the information through regular short term loan requests, the information would have been reasonably accessible to him and exempt under section 25(1) of FOISA. The Commissioner understands that this is now the case.

DECISION

³ <http://www.scotland.gov.uk/Resource/Doc/366739/0124836.pdf>

Decision 041/2013
Mr G
and the Scottish Prison Service



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 G.

The Commissioner finds that the SPS incorrectly withheld information under section 25(1) of FOISA. Given that the SPS has now provided Mr G with a copy of the information he requested, the Commissioner does not require the SPS to take any further action in respect of this failure.

Appeal

Should either Mr G or the Scottish Prison Service (SPS) 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
8 March 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...