

# Decision Notice



Decision 046/2014 Mr L and Stirling Council

Visiting Committee membership

Reference No: 201400264

Decision Date: 26 February 2014

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
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## Summary

On 6 October 2013, Mr L asked Stirling Council (the Council) for information about the Glenochil Prison Visiting Committee. The Council told Mr L that it did not hold the information requested. Following investigation, this was accepted by the Commissioner.

## Relevant statutory provisions

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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

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1. On 6 October 2013, Mr L wrote to the Council and asked for the number of members on the Visiting Committee of Glenochil Prison. He also asked for a number of other items of information relating to the functions of the Visiting Committee.
2. The Council responded on 29 October 2013. It notified Mr L that it did not hold any of the information he sought, advising that he might be able to obtain it from the Scottish Prison Service.
3. On 3 November 2013, Mr L wrote to the Council requesting a review of its decision. He stated that as the Council was responsible for appointing members of the Visiting Committee, he expected it to hold the information he sought.
4. On 7 December 2013, Mr L wrote to the Commissioner's office, stating that he was dissatisfied with the Council's failure to respond to his requirement for review. This resulted in the Commissioner issuing *Decision 014/2014 Mr L and Stirling Council* regarding the Council's failure to respond within the time allowed.



5. The Council notified Mr L of the outcome of its review in a letter dated 6 December 2013 (which was not received when first sent – a further copy was sent to him on 15 January 2014). The Council explained that while the Council had a statutory duty to appoint Visiting Committee members under the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Prison Rules), it had no other involvement in the Committee's administration. It further explained that the majority of the information he sought was in the public domain and provided Mr L with various relevant web-links. It also provided Mr L with a copy of the job description for Visiting Committee members.
6. On 1 February 2014, Mr L wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr L made a request for information to a Scottish public authority and 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

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8. On 13 February 2014, the investigating officer notified the Council in writing that an application had been received from Mr L, giving the Council the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was asked to explain the steps it had taken to establish that it did not hold the information requested.
9. The Council responded, providing submissions in support of its position that it did not hold the information.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both Mr L and the Council. She is satisfied that no matter of relevance has been overlooked.

## Information held by the Council

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This obligation is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.



12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority *should* hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. The Commissioner notes the submissions provided by Mr L, stating he believed the information he sought should be held by the Council. Mr L also objected to being given web-links, on the basis that (as a prisoner) he did not have access to the internet.
14. The Council explained to the Commissioner that other than being required to appoint members of the Visiting Committee under the Prison Rules, it had no further involvement in the Visiting Committee or its administration. It explained that Visiting Committee members discharged their functions on behalf of the Scottish Ministers, in co-operation with the Ministers and the Governor of the prison. It described the research it carried out to confirm the position.
15. The Council stated that in an effort to provide advice and assistance, it had directed Mr L to the web-links provided and drew his attention to the relevant provisions of the Prison Rules. The Council stated that it was unaware that Mr L would not have access to the internet (believing he might have limited, controlled access). It further commented, however, that it had advised him of the relevant legislation in the review outcome. It understood he could access the legislation via the prison library or by requesting the information from the Scottish Prison Service (which it had directed him to as the appropriate authority).
16. The Council also submitted that it had intended to provide Mr L with a paper copy of the relevant provisions of the Prison Rules with the review outcome. It was only during this investigation that it realised it had only directed him to the web links. The Council apologised for this oversight and provided Mr L with copies of the relevant provisions (with an apology). It also acknowledged that, in future, it would not direct prisoners to information available on the internet.
17. While the Council did not believe it had any reason to hold the information requested by Mr L, it explained the searches and enquiries it undertook to ascertain whether it held anything falling within the scope of his request. It provided an explanation of the outcomes of these.
18. Having considered all relevant submissions and the terms of the request (including the provisions of the Prison Rules), the Commissioner accepts that the Council interpreted Mr L's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held and which fell within the scope of the request. Given the explanations provided, she is satisfied that the Council did not hold, and had no reason to hold, the information requested by Mr L.
19. The Commissioner is therefore satisfied that the Council was correct to give Mr L notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.



20. The Commissioner notes that the Council is now aware that prisoners generally do not have internet access, a point she would ask other authorities to bear in mind when dealing from information requests from them.

## **DECISION**

The Commissioner finds that the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr L.

## **Appeal**

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Should either Mr L or Stirling Council 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.

**Margaret Keyse**  
**Head of Enforcement**  
**26 February 2014**



## Appendix

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### 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.

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- (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.

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