

Decision Notice

Decision 047/2015: Mr D and the Scottish Prison Service

Regime review for a specified prison hall

Reference No: 201502867

Decision Date: 1 April 2015



Scottish Information
Commissioner

Summary

On 3 April 2014, Mr D asked the Scottish Prison Service (the SPS) for information relating to a regime review for a specified prison hall. The SPS provided some information, confirming on review that it did not hold any further information.

Following an investigation, the Commissioner found that the SPS had provided Mr D with all of the information it held and which fell within the scope of his request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 3 April 2014, Mr D made a request for information to the SPS. He asked for:
"... all as may be held by SPS management as to the ongoing [] regime review which I discussed this week with [] Deputy Governor and which is said to be waiting final approval by the 'Trade Union Side' in relation to [] regime arrangements".
2. The SPS responded on 28 April 2014 and provided Mr D with a copy of the relevant ongoing regime review plan, explaining that this was only a draft at the time.
3. On 21 May 2014, Mr D wrote to the SPS requesting a review of its decision. He expected there to be minutes or other records of relevant discussions, given that he understood these discussions to be part of a formal consultation process with the Trade Union Side. He also expected the ongoing regime review to have been noted at management meetings at the prison, and commented that the plan provided by the SPS appeared to be incomplete.
4. The SPS notified Mr D of the outcome of its review on 17 June 2014. It stated that, after discussions with the Deputy Governor and a representative of the Trade Union Side, and after searching relevant resources, no further information had been located. The SPS went on to refer to one additional document which it had located, but which in its view fell outwith the scope of the request: in any case, it considered this information to be substantially similar to information provided in response to an earlier request by Mr D (with the result that section 14(2) of FOISA would have applied if the information was covered by the request).
5. On 17 December 2014, Mr D wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr D stated he was dissatisfied with the outcome of the SPS's review, and specifically with the adequacy of the SPS's searches. If formal consultation had taken place with the Trade Union Side, he believed the relevant discussions would have been recorded. If no such formal consultation or discussion took place, then he believed he was entitled to be told so. Given that the draft regime plan supplied to him was labelled "Prisoner Version", he believed other versions should exist.

6. Mr D also queried the SPS's reference to section 14(2) of FOISA. He did not, however, challenge the SPS's conclusion that the information in question did not fall within the scope of his request. In the circumstances, the Commissioner cannot regard section 14(2) as having been applied to any information caught by Mr D's request (the authority was quite specific in stating that it considered section 14(2) would have applied, but that it did not consider this information to fall within the scope of the request) and so cannot consider its application in this particular case.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr D made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. The case was allocated to an investigating officer and, on 28 January 2015, the SPS was notified in writing that Mr D had made a valid application.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this application, and specifically to describe the searches it had carried out and answer other questions relating to the context of the request.
10. The SPS provided its submissions to the investigating officer.
11. During the investigation, the SPS confirmed that no formal discussions had actually taken place on the subject matter of Mr D's request. In the circumstances of the review, it was not considered necessary to record such informal discussions as had taken place. The SPS wrote to Mr D and explained this to him.
12. After this, Mr D expressed concern about the absence of formal discussions. This is not, of course, a matter the Commissioner can consider in this decision. He also reiterated his belief that further relevant information should be held, referring in particular to the labelling of the draft regime review plan as "Prisoner Version".

Commissioner's analysis and findings

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

Has all relevant information been retrieved and provided?

14. The SPS explained the searches carried out with a view to identifying and locating the information requested by Mr D. It identified the staff members involved, explaining why they were involved. It described the electronic and paper resources searched and provided the search terms used.
15. Commenting on the labelling of the document as "Prisoner Version", the SPS explained that this designation was considered appropriate in the circumstances. In any event, its searches had identified no other versions. It also explained that the information Mr D believed to be missing had never been created, noting that the document remained a draft.

16. The SPS also explained how informal discussion of the review would occur among the staff directly responsible. These would not be recorded unless actions followed or there were significant issues arising.
17. Having taken account of all the submissions provided, the Commissioner is satisfied that the SPS identified the information it held and which fell within the scope of Mr D's request, and that this information was provided to Mr D.

Decision

The Commissioner is satisfied that the SPS complied with Part 1 of FOISA in responding to Mr D's request.

Appeal

Should either Mr D or the Scottish Prison Service 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

1 April 2015

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.

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