

Decision Notice



Decision 077/2013 Mr W and the Scottish Prison Service

Maintenance information

Reference No: 201300450
Decision Date: 26 April 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 19 November 2012, Mr W asked the Scottish Prison Service (the SPS) for information about maintenance carried out at HMP Shotts. The SPS failed to respond but, following a review, provided some information to Mr W while advising him that it did not hold the other information he had asked for.

Following an investigation, the Commissioner accepted that the SPS held no further relevant information, but also found that the SPS failed to respond to Mr W's request within the required timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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 19 November 2012, Mr W submitted a Prisoner Complaint Form to the SPS in relation to maintenance work being carried out at Shotts Prison. In his complaint, he requested the following information:
 - a) *all and any information contained within any such impact assessment as may have been carried out prior to the instruction or commencement of the maintenance work being carried out within the Segregation Unit at HMP Shotts this morning;*
 - b) *the specifications of such masonry equipment as has been used in the course of the maintenance work in question, to include the power specifications of any tools used and the specification of drill bits or other fittings or attachments used in this work;*
 - c) *any and all information held by the SPS as to the anticipated or measured noise levels generated in the course of this work*



- d) *the specifications of all such personal protective equipment (PPE) as was available to: (a) workers carrying out the maintenance work, (b) other SPS staff engaged in the vicinity of the work being carried out, and (c) prisoners held within the Segregation Unit whilst the work was being carried out.*
2. On 20 November 2012, the SPS responded to Mr W's Prisoner Complaint Form. This did not address Mr W's request for information.
 3. On 5 January 2013, Mr W wrote to the SPS, stating that the response of 20 November 2012 did not appear to address his request for information. This met the requirements of section 20(3) of FOISA and therefore was dealt with by the SPS as a requirement for review.
 4. The SPS notified Mr W of the outcome of its review on 30 January 2013. The SPS provided Mr W with information in response to his request, but informed him that it did not hold any information falling within the scope of part c) of the request.
 5. On 8 February 2013, Mr W 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 W 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

7. The SPS is an agency of the Scottish Ministers (the Ministers). On 20 February 2013, in line with agreed procedures, the investigating officer notified the Ministers in writing that an application had been received from Mr W. The Ministers were given the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, they were asked to comment on the steps taken by the SPS to establish what relevant information it held, and on its compliance with the relevant timescales in dealing with Mr W's request.
8. Subsequent references to contact with or submissions from the SPS are therefore references to contact with or submissions from the Ministers on behalf of the SPS.
9. The SPS responded on 22 March 2013. It explained the circumstances in which the maintenance was carried out and the related information it held. The SPS also accepted that it had failed to comply with the relevant timescale for responding to the request.
10. 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

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

Information held by the SPS

12. 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. Section 1(6) qualifies this obligation, making it subject to other provisions of FOISA which allow authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). 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. In his application to the Commissioner, Mr W questioned whether all relevant information held by the SPS had been provided to him. He further asserted that information provided to him had been fabricated or taken from a website promoting industrial tools and equipment.
14. Mr W disputed whether some of the information provided related to HMP Shotts, as requested (it contained a reference to Harviestoun Hall, HMP Glenochil). He believed this information to have been fabricated for the purpose of responding to his request. However, the Commissioner accepts as reasonable in the circumstances the SPS's explanation that the reference was an error arising from the method statement in question having been used in other prisons for the same work.
15. The SPS explained the background to the maintenance work carried out and the information that it held falling within the scope of the request. In particular, it explained that the work had been carried out by contractors rather than by SPS staff and this affected the amount of information available. It explained that there was no record of an impact assessment being conducted (part a) of the request) and Mr W was informed of this during the investigation.
16. The SPS acknowledged that its response of 30 January 2013 had incorrectly provided Mr W with the specification of a drill in response to part b) of his request. It confirmed that a grinding machine, rather than a drill, had been used for the work in question (again, Mr W was informed of this during the investigation).
17. In relation to PPE (part d) of the request), the SPS submitted that it had interpreted Mr W's request as being restricted to PPE which had been made available to address the risks presented by this specific work. In the circumstances, the Commissioner accepts this interpretation as a reasonable one.
18. The SPS confirmed that any PPE equipment available to its contractors (insofar as it held the information) was listed in the method statements provided to Mr W in the response of 30 January 2013.



19. The SPS provided further explanation that it held information relative to PPE which is available to both staff and prisoners, as and when required. In this case, it explained that no PPE had been made available to staff or prisoners. The Commissioner believes this would have been a reasonable conclusion to draw from the SPS's letter of 30 January 2013: in any event, this was made clear by the SPS in a letter sent to Mr W during the investigation (further information on the availability of PPE was also provided in the same letter).
20. Having considered all relevant submissions, the Commissioner accepts, on the balance of probabilities, that the SPS does not (and did not, at the time it received the request) hold any further information falling within the scope of Mr W's request.
21. In this regard the Commissioner finds that the SPS complied with Part 1 (and in particular section 1(1)) of FOISA, by providing Mr W with information in response to part d) of his request and by notifying him that it did not hold the information requested at part c). It did not, however, notify him (as it should) that it held no information falling within the scope of parts a) and b): in failing to do so, it failed to comply with section 1(1).

Technical issue

22. In his application to the Commissioner Mr W stated that he was dissatisfied with
 - the fact that his request had not been recognised as a request under FOISA and dealt with accordingly
 - the time taken to respond to his request and his requirement for review.
23. 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. This is subject to certain exceptions which are not relevant in this case.
24. The SPS acknowledged that Mr W's request was valid. It explained that some confusion had arisen from it being contained within a Prisoner Complaint Form. The request was not identified and dealt with as such, and only his complaint was responded to.
25. The SPS confirmed that staff at HMP Shotts were now aware that they needed to consider all requests and complaints as potential requests for information.
26. The Commissioner notes the SPS's comments on this matter, but must find that it failed to respond to Mr W's request within the 20 working days allowed by section 10(1) of FOISA.
27. 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. Again, this is subject again to exceptions which are not relevant in this case.
28. Mr W submitted that the SPS failed to respond to his requirement for review (of 5 January 2013) within the 20 working days as allowed by section 21(1) of FOISA. He stated that, due to the prison's internal mailing procedures, he did not receive the response dated 30 January 2013 until 5 February 2013 (outwith the 20 working days).



29. Mr W made no submissions to suggest that the response to his requirement for review had not been dispatched on 30 January 2013, which was within the 20 working days.
30. The Commissioner notes that FOISA does not oblige public authorities to verify whether, or when, an applicant has received a response to a request or a requirement for review. There is nothing to suggest that the SPS did not send a response to Mr W within 20 working days, as the date of its letter suggests. In the circumstances, the Commissioner concludes on balance that the SPS did not breach section 21(1) of FOISA in responding to Mr W's requirement for review.

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, by providing Mr W with certain information and correctly notifying him that certain other information was not held. However, the SPS failed to comply with Part 1 (and in particular with section 1(1)) of FOISA in failing to notify Mr W that it held no information falling within the scope of parts a) and b) of his request.

The Commissioner also finds that by failing to respond to Mr W's request for information within the timescale laid down by section 10(1) of FOISA, the SPS failed to comply with Part 1 of FOISA.

Given the SPS's response to Mr W's requirement for review, and considering its communications with Mr W during the investigation, the Commissioner does not require the SPS to take any action in respect of this failure in response to Mr W's application.

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.

Margaret Keyse
Head of Enforcement
26 April 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.
- ...

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) ... the receipt by the authority of the request; or
- ...

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.

...

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.

...