

Decision Notice



Decision 101/2014 Mr G and Scottish Prison Service

Charging policy for subject access requests

Reference No: 201400394
Decision Date: 6 May 2014

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

On 9 May 2013, Mr G asked the Scottish Prison Service (SPS) for information about its charging policy for subject access requests. The SPS provided some information while stating that it did not hold other information. The Commissioner carried out an investigation and found that the SPS had failed to provide Mr G with all of the relevant information it held.

Given that all of the information has now been provided to Mr G, the Commissioner did not require the SPS to take any action.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 9 May 2013, Mr G asked the SPS to provide him with all and any information it held relative to its charging policy for subject access requests under the Data Protection Act 1998 and the “data protection issue” which had given rise to the policy.
2. The SPS responded on 7 June 2013. It provided an explanation of the statutory context and the fee charged to Mr G.
3. On 1 August 2013, Mr G wrote to the SPS requesting a review of its decision. Referring to previous discussions with SPS staff, he expected further relevant information to be held.
4. On 29 August 2013, the SPS responded to Mr G’s requirement for review. It adhered to its original response to Mr G, stating that it held no further relevant information.
5. On 19 February 2014, 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 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 those requests. The case was then allocated to an investigating officer.

Investigation

7. On 6 March 2014, the investigating officer notified the SPS in writing that an application had been received from Mr G, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The SPS was asked to justify its reliance on any provisions of FOISA it considered applicable and, in particular, to explain the steps it had taken to identify and locate the information requested.
8. During the investigation, Mr G identified one item of further information which he believed fell within the scope of his request and therefore should have been provided in response. The SPS confirmed that Mr G had since been provided with a copy of this item.
9. Mr G confirmed receipt of the letter from the SPS, but submitted that it reinforced his belief that the SPS should hold further information.

Commissioner's analysis and findings

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

Information held by the SPS

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, 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 relevant 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.
13. The Commissioner notes the submissions provided by Mr G, in which he provides reasons why he considers the SPS should hold further information. She accepts that the item identified by Mr G during the investigation fell within the scope of his request (and therefore should have been provided by the SPS in response to the request).



14. In its submissions to the Commissioner, the SPS explained the searches and enquiries it undertook to ascertain whether it held any further information falling within the scope of Mr G's requests. It provided an explanation of the outcomes of these and further explained that the relevant decision on charging was taken locally and was not minuted.
15. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that (by the close of the investigation) the SPS carried out adequate searches to ascertain whether any further information was held. She is also satisfied that the additional information located has now been provided to Mr G.
16. Taking account of all of the circumstances, the Commissioner concludes that the SPS failed to comply fully with section 1(1) of FOISA, by failing (in dealing with Mr G's request and requirement for review) to identify, locate and provide all of the information it held and which fell within the scope of Mr G's request.

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 in responding to the information request made by Mr G. In failing to provide Mr G with all the information it held and which fell within the scope of his request, the SPS failed to comply with section 1(1) of FOISA.

Given that all of the information has now been provided to Mr G, the Commissioner does not require the SPS to take any action regarding this failure, in response to Mr G's information request.

Appeal

Should either Mr G 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
6 May 2014



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.
- ...