



Scottish Information
Commissioner

**Decision 109/2007 Mr Kenneth Smith and the
Scottish Prison Service**

*Request for minutes of meetings of the Prisoner's Information and
Advisory Committee of HMP Dumfries.*

**Applicant: Mr Kenneth Smith
Authority: The Scottish Prison Service
Case No: 200600655
Decision Date: 11 July 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 109/2007 Mr Kenneth Smith and the Scottish Prison Service

Request for minutes of meetings of the Prisoner's Information and Advisory Committee of HMP Dumfries – the Scottish Prison Service complied with the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr Smith

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 10(1)(a) (time for compliance); 21(4) (review by Scottish public authority).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Smith wrote to the Scottish Prison Service (the SPS), an agency of the Scottish Executive, requesting the copies of minutes of the Prisoners Information Advisory Committee (PIAC) meetings for HMP Dumfries for 2005. Mr Smith believed that he had not received a response and requested that the SPS review the manner in which it had dealt with his request. The SPS responded to Mr Smith disclosing all of the information requested. Mr Smith remained dissatisfied with the manner in which his request had been dealt with and applied to the Scottish Information Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS complied with FOISA in responding to Mr Smith's request for information.

Background

1. Mr Smith wrote to the SPS on 6 February 2006 and requested copies of minutes of PIAC meetings held in HMP Dumfries for 2005.



2. Mr Smith claims that he did not receive a response to his request for information and so on 21 March 2006 requested that the SPS review the way in which it had dealt with his request. In his request for review, Mr Smith also requested copies of all minutes for PIAC meetings held in 2004.
3. On 22 March 2006 the SPS responded to Mr Smith's request for review and provided him with copies of all the PIAC minutes of meetings held in HMP Dumfries which it held.
4. Mr Smith did not accept that all copies of minutes of PIAC meetings had been disclosed to him, and so applied to me on 23 March 2006 for a decision.
5. The case was then allocated to an Investigating Officer and the application validated by establishing that Mr Smith had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to his request.

The Investigation

6. In line with agreed procedures, the Investigating Officer wrote to the Scottish Executive (the Executive) on 7 August 2006, giving notice that an appeal had been received and that an investigation into the matter had begun. It invited comments from the Executive as required under section 49(3)(a) of FOISA. It was asked to supply my Office with an analysis of the SPS's responses to Mr Smith and copies of information which had been supplied to Mr Smith.
7. The Executive responded in writing on 11 September 2006 providing its comments on the application and copies of the minutes of PIAC meetings which had been supplied to Mr Smith.
8. In its response the Executive provided background information relating to the composition and organisation of PIAC meetings within Scottish prisons.
9. The Executive went on to assert that the SPS had responded to Mr Smith's initial request for information, and as part of that response provided all but one of the copies of PIAC meetings from 2005. The remaining copy of minutes had been omitted in error and was provided to Mr Smith in response to his request for review. In support of this it provided me with a copy of the response that the SPS had sent to Mr Smith.



10. The Executive also argued that the SPS had not been obliged to provide Mr Smith with copies of minutes from 2004, as Mr Smith had not requested those minutes in his original request. However, the Executive pointed out that the SPS provided copies of minutes of PIAC meetings from 2004 which it held in response to his request for review.
11. Finally, the Executive provided me with details of the methods used to search for the minutes of PIAC meetings, and evidence which showed that the SPS held no further information relating to his request.

The Commissioner's Analysis and Findings

12. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Smith and the Executive and I am satisfied that no matter of relevance has been overlooked.
13. In his application to me, Mr Smith outlined 3 aspects of the SPS's handling of his requests with which he was particularly dissatisfied. These were:
 14. Whether the SPS responded to his initial request
 15. Whether all of the information which had been requested was provided to him
 16. The provision of minutes of PIAC meetings dating from 2004
17. I will look at each of these aspects in turn.

The SPS's response to Mr Smith's request for information

18. Section 10 of FOISA states that an authority must respond to an applicant's request for information.
19. Mr Smith has argued that he received no response from the SPS to his initial request of 6 February 2006, and has applied to the Commissioner on this basis.
20. The Executive argued that all but one set of minutes from 2005 were provided to Mr Smith in response to his request for information, and that the remaining set of minutes was provided to him in response to his request for review, along with a second copy of all of the minutes from 2005, and sets of minutes from 2004.



21. The Executive accepts that there is no evidence to support Mr Smith having *received* a response to his request; however it did provide me with a copy of the response the SPS *sent* to Mr Smith.
22. Section 21(4)(a) of FOISA states that an authority may, as respects the request for information which an applicant has made, substitute, for any decision, a different decision in response to a request for review.
23. In effect, the SPS substituted its initial response for one which was received by the applicant and provided all sets of minutes from 2005. If I were to find that the SPS breached FOISA in its initial response, I must conclude that it replaced that response with another which fully complied with Mr Smith's request and therefore the provisions of FOISA.
24. While I accept that there is some ambiguity over whether Mr Smith received the SPS's initial response, I am of the view that FOISA does not oblige public authorities to verify whether an applicant has received a response to requests for information. I am satisfied that the Executive has provided me with sufficient evidence to show that the SPS sent a response to Mr Smith within 20 working days of his request being made (even if he did not receive that response) and so conclude that in this case the SPS did not breach section 10 of FOISA in responding to him.

Did Mr Smith receive all of the information he asked for?

25. Mr Smith argues in his application to me that he has not received all of the minutes of PIAC meetings which he had requested from the SPS. I have examined whether this is the case.
26. In its submissions to me the Executive provided evidence to show that the SPS conducted a full search of its records held at HMP Dumfries and that all of the minutes from 2005 which he had requested had been provided to him in response either to his request or subsequent request for review.
27. The evidence of the search carried out by the SPS highlights a number of difficulties it had in locating the records. The Executive has informed me that the SPS accepts that this was the case. It went on to say that the difficulties which it experienced should not have occurred. Accordingly, HMP Dumfries is reviewing the way in which the minutes of all meetings are held, maintained, and distributed. It concluded its remarks by informing me that the SPS has already made arrangements for all PIAC minutes to be held centrally on site.
28. I understand that there were some difficulties in locating the information which Mr Smith had requested. This, as well as the fact that it appears Mr Smith may not have received the initial response to his request sent by the SPS, has reinforced his belief that he has not received all of the information held in relation to his request.



29. I do not believe this to be the case. I have examined the records provided to Mr Smith and evaluated the methods used to search for the minutes of PIAC meetings from 2005 and am satisfied that no further records relating to Mr Smith's request exists.

Minutes of PIAC meetings from 2004

30. In his application to me Mr Smith stated that he was dissatisfied with the information which he received from the SPS in response to his request for review because it did not provide him with minutes of PIAC meetings held in 2004.
31. In his initial request, Mr Smith requested minutes of PIAC meetings from 2005. Only in his request for review did Mr Smith request minutes of meetings from 2004. Therefore the SPS were not obliged to send him those minutes from 2004 in its response to him.
32. In its submissions to me, the Executive noted that the SPS provided Mr Smith with copies of minutes from 2004 in response to his request for review. It also stated that during the course of the investigation, the SPS located two remaining sets of minutes from 2004, which it then sent to Mr Smith.
33. Because, in effect, Mr Smith made a new request for minutes of meetings from 2004 in his request for review, the process of making a request and request for review before applying to the Commissioner has not been exhausted and I am not obliged to investigate whether the Executive complied with the request for minutes from 2004 until Mr Smith has requested that the SPS review its response to that request.
34. In any event, I am satisfied that the SPS has provided evidence to show that it responded to Mr Smith in a timely manner and provided him with all of the information he initially requested (the minutes of PIAC meetings held in HMP Dumfries in 2005). I conclude, therefore, that the SPS fully complied with the requirements of FOISA in responding to Mr Smith's request for information.

Decision

I find that the Scottish Prison Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to Mr Smith's request for information.



Appeal

Should either the Scottish Prison Service or Mr Smith wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 45 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
11 July 2006



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.

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;

...

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(...)

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.