

Decision Notice

Decision 115/2015: Mr Ian Scott and Scottish Prison Service

Copies of a health and safety report

Reference No: 201500902

Decision Date: 23 July 2015



Scottish Information
Commissioner

Summary

Mr Scott asked the Scottish Prison Service (the SPS) for all versions of a Health and Safety report (the report). The SPS stated that it did not hold any draft reports, and the only version held had been previously provided to Mr Scott.

Following an investigation, the Commissioner upheld the SPS's response.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 11 November 2014, Mr Scott asked for "the SPS Health and Safety report" presented by a named individual. On 21 November 2014, he clarified that he wished to receive both draft and confirmed versions of the report.
2. The SPS responded on 8 December 2014. It stated that the report was exempt from disclosure under section 27 of FOISA as it was due to be published in 12 weeks.
3. On 9 December 2014, Mr Scott emailed the SPS requesting a review of its decision on the basis that he did not want to wait 12 weeks for the report.
4. On 12 January 2015, the SPS issued a review response, stating that it did not hold any draft copies of the report, and that Mr Scott had already received a copy of the only version.
5. On 15 May 2015, Mr Scott emailed the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Scott stated he was dissatisfied with the outcome of the SPS's review because he considered that other versions of the report existed and were held by the SPS.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Scott 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.
7. On 5 June 2015, the SPS was notified in writing that Mr Scott had made a valid application. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 15 June 2015, the SPS was invited to comment on this application and answer specific questions, including providing details of the searches it had conducted in searching for the requested information. The SPS provided its submissions on 15 June 2015.

9. On 24 June 2015, the SPS and Mr Scott were asked to provide copies of emails they held relating to the distribution of the report. They later did so.

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 Scott and the SPS. She is satisfied that no matter of relevance has been overlooked.
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 certain qualifications which 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, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the date of receipt and the time the information is given (section 1(4)). This might not necessarily equate with information an applicant believes the authority *should* hold. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
13. In its submissions, the SPS provided a copy of an email from the report author confirming that she had only provided one version of the report to the SPS. The SPS also explained that the report was only ever provided in draft form. It was not accepted by the SPS in its entirety.
14. The SPS and Mr Scott provided copies of the report that had been circulated by email, specifically those attached to:
- The original email from the report's author to the SPS Head of Health and Safety
 - The email from the SPS Head of Health and Safety to the SPS Head of Performance and Improvement (who passed it onto the Trade Union Side (TUS))
 - the email from the SPS Head of Health and Safety to SPS officials
 - the email from the TUS/SPS employee to Mr Scott
15. These copies of the report were compared, together with the copy previously disclosed to Mr Scott, but no differences were identified.
16. Mr Scott provided copies of correspondence, which he believed would demonstrate that other versions of the report were held by the SPS. The Commissioner notes that an email dated 14 April 2014 states that "the initial document was being redrafted slightly and that some of the language was being amended", whilst in an email dated 4 February 2015, reference is made to "the report and initial draft report (if there was one)". The Commissioner also notes that in a letter to Mr Scott dated 24 April 2015, the SPS stated that the report was provided in draft, and was not accepted by the SPS. It goes on: "No further version of the report has been produced and so it remains in draft".
17. The Commissioner can understand why Mr Scott considers that the SPS is likely to hold other versions of the report than the one he received. It would be usual to expect that a report described as a draft would later be finalised. She also notes that, in its letter of 2 March 2015, the SPS "confirmed" that there were "no draft copies of the report", which is potentially confusing, given that the SPS has described the report it holds as a draft report.

However, the Commissioner has not found any evidence that the report was revised and altered after its receipt by the SPS. She accepts the SPS's statement that it did not require the report's author to revise the report. She has not found evidence of any revised version of the report being circulated within the SPS.

18. Having considered the terms of this request and all of the relevant submissions, specifically the copies of the report provided by both parties, the Commissioner accepts that the SPS does not hold any other versions of the report, other than that provided to Mr Scott. For that reason, the Commissioner accepts that the SPS was correct to give notice, in terms of section 17 of FOISA, that it did not hold any draft copies of the report.

Decision

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

Appeal

Should either Mr Scott or the SPS 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

23 July 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.

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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