

Decision Notice

Decision 123/2015: Mr J and the Scottish Prison Service

Investigation report

Reference No: 201501044

Decision Date: 29 July 2015



Scottish Information
Commissioner

Summary

On 16 February 2015, Mr J asked the Scottish Prison Service (the SPS) for information relating to an investigation carried out by the SPS and New College Lanarkshire (the College). The SPS told Mr J that it did not hold the information requested.

Following an investigation the Commissioner accepted this.

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 16 February 2015, Mr J wrote to the SPS and made reference to a letter Mr J had received from the College, confirming that the SPS and the College had investigate an incident which arose in 2012. This related to allegations about a College staff member based at HMP Shotts. Mr J requested a copy of the investigation report.
2. On 19 March 2015, the SPS provided Mr J with a response. It informed him that it did not hold the requested information, explaining that there had been no separate investigation by the SPS and suggesting that the information he sought might be held by the College (which had carried out the investigation).
3. On 23 March 2015, Mr J wrote to the SPS, requesting a review on the basis that he did not accept that the SPS did not hold the information.
4. The SPS notified Mr J of the outcome of its review on 21 April 2015. It upheld its original decision, confirming that it did not hold the information.
5. On 1 June 2015, Mr J wrote to the Commissioner's office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. In summary, he submitted that the SPS did hold the information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr J 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. The case was subsequently allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application.

8. On 29 June 2015, the investigating officer notified the SPS in writing that Mr J had made a valid application and was invited to comment on this application. It was asked to explain the steps it had taken to identify and locate the information requested.
9. The SPS provided a full response on 14 July 2015.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr J 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, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the time the request is received and the time the information is given (section 1(4)). This is not necessarily to be equated with information an applicant believes the authority *should* hold. 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. The Commissioner notes the submissions provided by Mr J, in which he provides reasons why he believes the SPS should have held the information requested.
14. In its submissions to the Commissioner, the SPS explained that the investigation related to a College staff member and was therefore conducted by management at the College. It confirmed that whilst the matter was discussed with SPS staff at the time, at no point was the SPS involved in the investigation.
15. In order to confirm whether any information was held, the SPS explained which SPS staff were consulted and the searches carried out to confirm that it did not hold the information requested by Mr J.
16. Having considered all relevant submissions and the terms of the request, and taking into account that the individual who was subject of the investigation was not employed by the SPS, the Commissioner accepts that the SPS carried out adequate searches and other enquiries to ascertain whether it held any information falling within the scope of Mr J's request. She accepts that the SPS does not (and did not, and could not reasonably be expected to) hold the information requested by Mr J.

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 requests made by Mr J.

Appeal

Should either Mr J 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

29 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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