

# Decision Notice



Decision 128/2012 Mr X and the Scottish Prison Service

Failure to carry out review

Reference No: 201201321

Decision Date: 02 August 2012

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether the Scottish Prison Service (the SPS) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr X.

## Background

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1. On 30 April 2012, Mr X wrote to the SPS requesting certain specified information.
2. The SPS responded on 22 May 2012 and refused to supply the information on the basis that it was exempt from disclosure under section 38(1)(b) of FOISA.
3. On 28 May 2012, Mr X wrote to the SPS requesting a review of its decision and stating that he did not agree with the application of section 38(1)(b) of FOISA.
4. Mr X did not receive a response to his requirement for review and, on 6 July 2012, wrote to the Commissioner stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr X had made a request for information to a Scottish public authority and had 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

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6. The SPS is an agency of the Scottish Ministers (the Ministers) and on 11 July 2012, in line with agreed procedures, the Ministers were notified in writing that an application had been received from Mr X and invited to comment on the application, as required by section 49(3)(a) of FOISA. Subsequent references to contact with or submissions from the SPS are therefore references to contact with or submissions made by the Ministers on behalf of the SPS.
7. The SPS responded on 31 July 2012 and acknowledged that they had failed to comply with the required timescale in this case. It apologised and explained that this had been due to an administrative error.



8. The SPS provided the Commissioner with a copy of a letter notifying Mr X of the outcome of its review, which had been issued to him on 11 July 2012. Mr X subsequently confirmed that he had received this letter on 16 July 2012, and expressed his continued dissatisfaction with the SPS's failure to meet the statutory timescale for response.

## Commissioner's analysis and findings

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9. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant to this case.
10. Since the SPS did not provide a response to Mr X's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA in dealing with Mr X's request for information.
11. Given that the SPS has now responded to Mr X's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr X's application.

## 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 (FOISA) in dealing with the information request made by Mr X, specifically by failing to respond to Mr X's requirement for review within the timescale laid down by section 21(1) of FOISA. She does not require the SPS to take any action in respect of this failure in response to Mr X's application.

## Appeal

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Should either Mr X 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 notice.

Decision 128/2012  
Mr X  
and the Scottish Prison Service



**Claire Sigsworth**  
**Deputy Head of Enforcement**  
**02 August 2012**



## Appendix

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### 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.

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##### 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.

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