

# Decision Notice

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## Decision 133/2015: Mr K and the Scottish Prison Service

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### Search procedures at external work placements

Reference No: 201500739

Decision Date: 19 August 2015



## Summary

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On 2 October 2014, Mr K asked the Scottish Prison Service (the SPS) for information relating to procedures for searching prisoners at external work placements.

The SPS provided some information, informing Mr K that it did not hold the remainder. Mr K was dissatisfied that he had not been provided with all the information he had requested and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the SPS did not hold any further information.

## Relevant statutory provisions

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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

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1. On 2 October 2014, Mr K made a request for information to the SPS. He asked for a copy of all protocols and procedures applicable to SPS staff with regard to search procedures while an inmate is located at an external work placement. Specifically, he sought restrictions and limitations relating to placement vehicles, with particular reference to –
  - (a) searching vehicles without permission to do so
  - (b) any consideration to be given or shown to others in the vehicle (citing examples)
  - (c) any obligation on SPS staff to identify themselves prior to the search
  - (d) search powers in relation to a privately owned vehicle on private land, and
  - (e) powers of seizure by SPS staff of any items discovered as a result of unlawful search.

He also asked who was currently in possession of a specific item recovered during the search, and on whose authority it was being held.
2. The SPS responded on 5 November 2014. It provided information in relation to the item recovered, but informed Mr K that it held no protocols, policies or procedures on searching at placements.
3. On 5 December 2014, Mr K wrote to the SPS requesting a review of its decision. He believed relevant protocols and procedures would be held.

4. Having received no response to his requirement for review, Mr K wrote to the SPS again (reiterating his dissatisfaction) on 26 January 2015.
5. The SPS notified Mr K of the outcome of its review on 17 February 2015, upholding its original decision without modification. It confirmed it had no record of having received Mr K's requirement for review of 5 December 2014.
6. On 10 April 2015, Mr K wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr K stated he was dissatisfied with the outcome of the SPS's review because his request had not been responded to in full, referring to a number of specific points in the request.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Mr K 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.
8. On 5 May 2015, the SPS was notified in writing that Mr K had made a valid application and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this application and answer specific questions. These focused on the searches carried out to identify and locate any information falling within the scope of the relevant parts of his request.

## Commissioner's analysis and findings

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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 K and the SPS. She is satisfied that no matter of relevance has been overlooked.

### Whether information was held

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
12. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect. In this case, the SPS issued Mr K with such a notice.
13. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. She also considers, where appropriate, any reason offered by the public authority to explain why the information is not held. While it may be relevant as part of this exercise to explore what information should be held, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.

14. In its submissions to the Commissioner, the SPS maintained that it did not hold any information falling within the scope of those parts of Mr K's request referred to in his application. It referred to the applicable legislation, and provided evidence of the searches carried out in reaching this conclusion.
15. In relation to these searches, the SPS explained that searches had been conducted by managers at the SPS's Open Estate, and by relevant senior staff with direct responsibility for providing access to the community and searching, as these individuals would have been able to identify readily any information falling within the scope of Mr K's request.
16. The SPS confirmed that searches of the SPS Prisons Resource Library had also been conducted. It explained that a section of its SharePoint site contained all policies, protocols and guidance relating to searching. It provided screenshots evidencing its position that this site was the most likely resource for any information held, and to illustrate its content.
17. The Commissioner notes the explanations provided by the SPS.
18. Having considered all the relevant submissions and the terms of the request, the Commissioner is satisfied that the SPS had taken adequate, proportionate steps to establish what information it held and which fell within the scope of Mr K's request. She accepts, on balance, that any information relevant to the request was capable of being identified using the searches described by the SPS. She is therefore satisfied that the SPS does not (and did not, on receiving the request) hold the information requested. She also finds that this was stated by the SPS's responses to Mr K, in respect of all parts of the request covered by his application.

## Decision

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

## Appeal

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Should either Mr K 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**

**19 August 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.

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#### 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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