

Decision Notice

Decision 137/2016: Mr N and the Scottish Prison Service

Marriage and civil partnership in prisons

Reference No: 201600596

Decision Date: 27 June 2016



Scottish Information
Commissioner

Summary

On 1 February 2016, Mr N asked the Scottish Prison Service (SPS) for information on getting married or entering into a civil partnership in prison.

The SPS released some information, while informing Mr N that it did not hold other information. It acknowledged the existence of a draft policy, but failed to address whether this fell within the scope of the request. Following a review, Mr N remained dissatisfied and applied to the Commissioner for a decision.

During the Commissioner's investigation, the SPS disclosed the draft policy to Mr N: the Commissioner found that this fell within the scope of the request and should have been disclosed earlier. The Commissioner was satisfied that Mr N then had all the relevant information the SPS held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 1 February 2016, Mr N made a 4-part request for information to the SPS, which included the following two elements which formed the basis of his application to the Commissioner:
 - (i) The process for getting married in prison, and whether it was the same as for same sex couples?
 - (ii) The marriage and civil partnership protocol for people in custody who wish to enter into a civil partnership or get married.
2. The SPS responded to the request on 29 February 2016. For parts (i) and (ii) above, the SPS informed Mr N that it did not hold the information. In relation to part (i), the SPS confirmed that it held a draft policy but gave no further explanation as to whether it considered this to fall within the scope of the request.
3. On 2 March 2016, Mr N wrote to SPS requesting a review of its decision. He was dissatisfied that no information was disclosed to him in response to the above points. He explained how he had become aware of relevant information, available online, which suggested more information on the subject must be held.
4. The SPS notified Mr N of the outcome of its review on 30 March 2016. It confirmed there was information online addressing the other parts of his request (not subject to Mr N's application here) and provided Mr N with a copy of the relevant statistics.
5. On 1 April 2016, Mr N wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr N stated he was dissatisfied with the outcome of SPS's review in respect of the parts (i) and (ii) of his request, remaining convinced that the SPS held further relevant information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr N 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 18 April 2016, the SPS was notified in writing that Mr N 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. The SPS was invited to comment on this application, including how it established what relevant information it held and the relevance of the draft policy.
9. The SPS wrote to Mr N on 26 May 2016 disclosing the draft policy to Mr N. It also provided submissions to the Commissioner.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr N and SPS. She is satisfied that no matter of relevance has been overlooked.

Information held by SPS

11. The SPS was asked to explain the searches it conducted to identify the information Mr N described in his request. The SPS explained which systems it searched and how it did so. It acknowledged that it initially failed to check information on its website, until Mr N requested a review, at which time it disclosed the online information it held for the other parts of his request not complained of here. When explaining searches, the SPS also confirmed which staff it consulted, why these staff would be best placed to conduct searches and the search criteria used.
12. This was how the draft policy (in fact entitled a protocol) was identified as being the only relevant information held. The SPS accepted that it fell within the scope of Mr N's request and provided him with a copy. It appears to address both parts of the request.
13. 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. This is 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.
14. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
15. Having considered all relevant submission and the terms of the request, the Commissioner is satisfied that the SPS took adequate, proportionate steps to identify and locate any information it held and which fell within the scope of Mr N's request.
16. Given its changed position on the draft policy/protocol during the investigation, the Commissioner concludes that the SPS was incorrect to rely on section 17(1) of FOISA in

relation to those part of Mr N's request under consideration here. Its failure to provide this information earlier was a breach of section 1(1) of FOISA.

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 responding to the information request made by Mr N, in the respects covered by his application to the Commissioner.

The SPS was incorrect to rely on section 17(1) of FOISA in relation to the relevant parts of Mr N's request, given that it held information in a draft policy/protocol. By failing to provide this information in response to Mr Min's information request or his requirement for review, the SPS failed to comply with the requirements in section 1(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of this failure, in response to Mr N's application, given that he has since been provided with the information.

Appeal

Should either Mr N 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

27 June 2016

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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