

Decision Notice



Decision 150/2011 Mr Z and the Scottish Prison Service

CCTV footage

Reference No: 201101250
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Summary

Mr Z asked the Scottish Prison Service (the SPS) for CCTV footage recorded on a specific date. The SPS responded by stating that the information was not held. Following a review, the SPS stated that, due to a technical error, it did in fact hold the information. However, when the SPS made arrangements with Mr Z to allow him to view the recording, it was unable to do so, because of further technical problems.

Following an investigation, the Commissioner was satisfied that the information requested by Mr Z was no longer held by the SPS.

However, the Commissioner was concerned at the apparent delay in taking steps to secure the CCTV footage and recommended that the SPS review its procedures and staff training to ensure that staff are aware of the limited time that CCTV images are retained and of the need to prevent the destruction of information.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (5) (General entitlement) and 17(1) (Information not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 11 December 2010, Mr Z wrote to the SPS requesting CCTV footage covering the desk area of H4 and H4 South between 09:00 and 09:30 on Saturday 11 December 2010.
2. On 13 December 2010, the SPS acknowledged Mr Z's request for information, which it described as having been received on 13 December, and advised him that it would respond by 7 January 2011.
3. The SPS actually responded on 5 January 2011, informing Mr Z that it no longer held the CCTV footage.



4. On 7 January 2011, Mr Z wrote to the SPS, requesting a review of its decision. Mr Z commented that FOISA requires an authority to retain information pending the determination of a request. (This is a reference to section 1(5) of FOISA, which is addressed below.)
5. The SPS notified Mr Z of the outcome of its review on 14 January 2011. Mr Z was informed that, on review, it had been discovered that, although the recording system had originally reported that the footage was unavailable (on the basis that it had been overwritten), due to technical failures in the system, the footage had not in fact been overwritten and was in fact still held. The SPS indicated that it would arrange for Mr Z to view the footage during the week commencing 17 January 2011.
6. However, on 22 January 2011, the SPS wrote to Mr Z, confirming the details of a conversation which had taken place with him on 21 January 2011. The letter noted that the footage had been transferred onto a disk, that the SPS had attempted to show the footage to Mr Z, but that, for technical reasons, the SPS had been unable to do so. The SPS further explained that efforts were being made to ascertain if the footage could be provided at a later date.
7. On 1 February 2011, the SPS wrote again to Mr Z, informing him of the sequence of events showing the efforts made to recover and provide him with the footage. The SPS concluded that the footage could not be recovered and, as such, confirmed, in terms of section 17(1) of FOISA, that it did not hold the footage.
8. Mr Z thereafter raised concerns with the Commissioner regarding whether the footage he had requested had been deliberately withheld and whether an offence under section 65 of FOISA had been committed. This was investigated separately, with the conclusion that there was no evidence that such an offence had occurred. Mr Z and the SPS were informed of this.
9. On 11 July 2011, Mr Z wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10. The application was validated by establishing that Mr Z 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

11. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 12 July 2011 that an application had been received from Mr Z and were given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA).



12. Subsequent references to correspondence to and from the SPS should be read as including correspondence to and from the Ministers on its behalf.
13. The SPS responded on 1 August 2011.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Z and the SPS and is satisfied that no matter of relevance has been overlooked.
15. In his application to the Commissioner, Mr Z raised a number of grounds of dissatisfaction, which can be summarised as follows:
 - a. the date of receipt of his request had been wrongly stated by the SPS, leading to a miscalculation in the date the response was due;
 - b. the response made no reference to any section within FOISA;
 - c. inadequate steps were taken to secure the CCTV footage he had requested; and
 - d. the SPS failed to provide the CCTV footage.

These issues are addressed in turn below.

Date of receipt of request

16. In line with section 74(1)(b)(i), any reference in FOISA to a request for information being made is to be construed as a reference to it being "delivered". In this case, Mr Z's information request was delivered to a member of the SPS staff on 11 December 2010. During the investigation, the SPS accepted that it had been wrong to treat the request as having been received on 13 December 2010 and that it had miscalculated the initial response date. However, the response was, in any event, issued within the timescales set down by FOISA. As such, although the date had been miscalculated, there was no breach of FOISA.

Lack of reference to FOISA

17. The Commissioner notes that the SPS responded to Mr Z on 5 January 2011, informing him that it no longer held the CCTV footage he had requested. The response made no direct reference to section 17(1) of FOISA.
18. Section 17(1) states that, where an authority receives a request for information which it does not hold, it must give the applicant notice in writing that it does not hold it. Authorities are not obliged to include a reference to "section 17" in the response, although it can be helpful to do so. As such, the failure to refer to section 17 did not constitute a breach of FOISA.



Steps taken to secure the footage

19. Section 1(1) of FOISA states 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 restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. 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 of the date of receipt and the time the information is given (section 1(4)). However, the information is not to be destroyed before it can be given, unless it is not reasonably practicable to prevent the destruction from occurring (section 1(5)). The Commissioner therefore took steps to ascertain whether reasonable steps had been taken to prevent the footage being overwritten in the first place.
20. The SPS advised the Commissioner that the CCTV footage in question is on an automatic overwrite and that the length of time any recording is held by the SPS will vary between 14 and 28 (calendar) days. However, information requests are dealt with by FOI leads in each of its prisons and, in the SPS's view, it was not reasonably foreseeable for the FOI lead to be aware of when CCTV footage would be overwritten as the tasks surrounding CCTV data is undertaken by entirely different staff.
21. While the Commissioner accepts that the FOI lead would not have known exactly when the CCTV footage would be overwritten, he considers that it is not unreasonable to expect SPS staff to be aware that the CCTV was likely to be overwritten at some point and to take reasonable steps, following the receipt of the request, to secure the information requested and to prevent destruction from occurring. The SPS has not been able to evidence when such steps were taken (the Commissioner understands that the person dealing with the request was not able to deal with it until some time after the request was logged on 13 December 2010). The Commissioner notes that a response was not issued until 5 January 2011, almost one month after the request was made.
22. In this particular case, because of a fault in the recording system, the delay in securing the footage did not lead to the destruction of the information requested (that being later caused by the technical failure of the copy of the DVD). As a result, the Commissioner must find that no breach of section 1(5) occurred.
23. However, the Commissioner recommends that the SPS reviews its procedures and staff training to ensure that the FOI leads in each of their establishments are aware that CCTV footage may only be retained for a limited time and of the need to prevent the destruction of information as required by section 1(5) of FOISA.



Failure to provide the CCTV footage

24. As noted above, the SPS initially advised Mr Z that it did not hold the footage he had asked for, although it later advised him that, due to a technical fault, it did still hold the footage. The recording hard drive had developed a fault and, as a result of that fault, the footage in question had not been overwritten. Following the examination of the CCTV recording system, and prior to the hard drive being removed for repair, the SPS was able to secure a copy of the footage, which was copied onto a DVD in order that it could be viewed by Mr Z at a later date.
25. The Commissioner is satisfied, from the evidence provided to him during the investigation, that the DVD upon which the images had been recorded was corrupted and the images could no longer be retrieved. Accordingly, he is satisfied that the CCTV footage requested by Mr Z is no longer held by the SPS and that the SPS is unable to provide Mr Z with a copy of that information.

DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Z. He is satisfied that the information is no longer held by the SPS.

However, the Commissioner is concerned at the apparent delay in taking steps to secure the CCTV footage and recommends that the SPS review its procedures and staff training to ensure that staff are aware of the limited time that CCTV images are retained and of the need to prevent the destruction of information as required by section 1(5) of FOISA.

Appeal

Should either Mr Z or the SPS 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.

Kevin Dunion
Scottish Information Commissioner
8 August 2011



Appendix

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.
- ...
- (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.
- (5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).
- ...

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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