

# Decision Notice



Decision 158/2010 Mr P and the Scottish Prison Service

Scottish Prison Service policies

Reference No: 201000937

Decision Date: 9 September 2010

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr P requested from the Scottish Prison Service (the SPS) information relative to various SPS policies. The SPS responded by providing some information and indicating that other information was either not held or was otherwise available to Mr P. Following a review, as a result of which Mr P was provided with some further information, Mr P remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which further information was released, the Commissioner found that the SPS had partially failed to deal with Mr P's request for information in accordance with Part 1 of FOISA, by failing to respond to Mr P's request within 20 working days, wrongly identifying certain information as not held and failing to provide certain of the information requested. Given the subsequent provision of information to Mr P, the Commissioner did not require the SPS to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held) and 21(1) (Review by Scottish public authority)

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

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1. On 1 February 2010, Mr P wrote to the SPS requesting the following information:

*Request 1.*

*The total amount of FOISA requests the SPS received from prisoners at HMP Peterhead during 2008/9 requesting a copy of the SPS Employee Code of Conduct; and of those requests, how many were provided with a copy of this document and the rationale behind this decision.*



*Request 2.*

*Please describe what constitutes gross misconduct and what procedures are invoked when it is suspected that the acts or omissions of an officer or employee may constitute misconduct. How fact finding exercises are managed and the disciplinary action which may be taken against an officer or employee who is found to have misconducted himself, and the right of appeal of any such officer or employee. Provision of a copy of the relevant sections from the SPS Employee Code of Conduct will satisfy request.*

*Request 3.*

*Please confirm what the rules convey about the use of CCTV surveillance and where cameras may or may not be positioned. I also seek clarification about general duties of officers and employees who operate these cameras, the training provided, and what robust procedures are in place to identify and deal with any suspected abuse of the system. Provision of a copy of the relevant sections from the SPS CCTV Code of Practice will satisfy request.*

*Request 4.*

*Please confirm if the Assistant Director of Prisons has approved a written case by the Head of Operations to site cameras in areas of privacy within HMP Dumfries, and if so, was the installation of these cameras carried out in consultation with the National TUS. I make reference to the camera situated in C2/3 accommodation which points directly into an area of privacy (ablution). I seek clarification as to why the SPS deem it appropriate to monitor around the clock prisoners utilising the toilet and bathroom facilities in these areas.*

*Request 5.*

*Please provide me with information on the role and responsibilities of adjudicators, the purpose of adjudication, the charging process, how procedures are to be conducted, how production evidence is to be managed and what should happen to evidence when proceedings are concluded, the rights to call and cross-examine witnesses, appeals and punishments, an accused right to orderly room documentation, verdicts and the test that is to be applied to a finding of guilt. Provision of a copy of the relevant sections from Guidance on Orderly Room Procedures will satisfy request.*

2. The SPS responded on 3 March 2010. In relation to request 1 above, the SPS stated that it had no record of a prisoner requesting a copy of the Code of Conduct, advising in addition that any prisoner doing so would be advised that it was available for viewing in the prison library. In response to requests 2 and 5, the SPS provided what it considered to be the relevant extracts from the procedures cited. In relation to requests 3 and 4, the SPS stated that the information had previously been provided and was therefore reasonably accessible to Mr P and subject to section 25 of FOISA.



3. On 8 March 2010, Mr P wrote to the SPS requesting a review of its decision. He advised that he was unhappy with the time taken to respond to his request. He also noted that he understood at least one prisoner at Peterhead prison had asked for and been given a copy of the Employee Code of Conduct (request 1). He complained that section 3 of the SPS Employee Code of Conduct pertained to issues of misconduct which could be dealt with informally, but this Chapter had not been provided (request 2); disputed that he had previously been given information relative to requests 3 and 4; and disagreed that he had been provided with a suitable and sufficient response to request 5.
4. The SPS notified Mr P of the outcome of its review on 2 April 2010 and apologised for the delay in its response to his request. The SPS confirmed that no information was held in relation to request 1; confirmed the response to request 2 reflected the request while providing Mr P with a copy of section 3 of the Code of Conduct as requested; withdrew reliance on section 25 in relation to requests 3 and 4, providing further information and explanation; and in relation to request 5 upheld the decision but in addition provided further relevant information.
5. On 30 April 2010, Mr P 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.
6. In his application to the Commissioner Mr P made specific comment regarding his dissatisfaction with the responses in relation to requests 1 and 5. In relation to request 4, Mr P sought clarification as to why the SPS deemed it appropriate to monitor prisoner toilet facilities.
7. Mr P also wished the Commissioner to consider the SPS's alleged failure to respond to his request of 1 February 2010 and request for review of 8 March 2010 within the respective periods of 20 working days allowed by FOISA.
8. The application was validated by establishing that Mr P 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.

## Investigation

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9. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 15 June 2010 that an application had been received from Mr P and asked to provide the Commissioner with any information withheld from him. 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.



10. As a result of being informed that an application had been made to the Commissioner, the SPS further responded to Mr P on 16 June 2010, and in relation to request 1 confirmed that one prisoner had requested and been provided with a copy of the SPS Employee Code of Conduct. The SPS also provided a copy of the Code to Mr P.
11. The SPS also provided further explanation in relation to request 4 and stated that it now considered its responses to request 4 and 5 to have fully responded to those requests. However, to further assist, the SPS informed Mr P that the Guidance on Orderly Room Procedures was available from the library at HMP Dumfries.
12. Mr P then wrote the Commissioner on 22 June 2010, complaining that in earlier correspondence the SPS had made no reference to the Guidance on Orderly Room Procedures being available within the prison library. He also pointed out that it was not available there. He advised that he considered the information supplied in response to request 5 (extracts from the Prison and Young Offenders Institutions (Scotland) Rules 2006) to be manifestly different from what he had sought in this request.
13. Mr P also acknowledged that he had received a copy of the Employee Code of Conduct on 17 June 2010 (request 2). However, in relation to this and the CCTV Code of Practice (request 3), he complained about the SPS's failure to provide all the information he had requested in the course of dealing with his request, about the manner in which certain information had been provided and about what he believed to be the intentional alteration of certain information which had been released.
14. Following receipt of this further letter, the case was allocated to an investigating officer. On 30 June 2010 the investigating officer contacted the SPS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions on its handling of Mr P's request.
15. The SPS responded on 23 July 2010 with its submissions, and in subsequent correspondence provided further information for the purposes of the investigation. Further submissions were also received from Mr P. In relation to these, it should be noted that the Commissioner can only consider those aspects which raise issues of compliance with Part 1 of FOISA: he cannot, for example, consider why the SPS deemed it appropriate to monitor prisoner toilet facilities. Where relevant, those submissions received from Mr P and the SPS will be considered fully in the Commissioner's analysis and findings below.

## **Commissioner's analysis and findings**

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16. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr P and the SPS and is satisfied that no matter of relevance has been overlooked.



### *Technical Issues*

17. The Commissioner will first of all consider the technical issues raised by Mr P, who complained that the SPS failed to respond to his request and his subsequent request for review within the timescales allowed.
18. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
19. Mr P's request for information was dated 1 February 2010 and the SPS acknowledged that it was received on 2 February 2010. Given that the SPS should have responded on 2 March 2010 but did not respond until 3 March 2010, the Commissioner finds that the Council failed to respond to Mr P's request for information within the 20 working days allowed by section 10(1) of FOISA.
20. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject again to exceptions which are not relevant in this case.
21. Mr P's request for review was dated 8 March 2010. Given that the response to the request for review is dated 2 April 2010 and Mr P accepts he received it on 4 April 2010, the Commissioner finds that the SPS complied with section 21(1) of FOISA by responding to Mr P's request for review within the time allowed.

### *Request 1*

22. In relation to request 1, the SPS responded to the effect that no information was held to show that anyone had requested a copy of the SPS Employee Code of Conduct from HMP Peterhead. Whilst this was upheld on review, following Mr P's application to the Commissioner, the SPS confirmed to him that it had in fact received one such request. Consequently, the Commissioner finds that the SPS incorrectly responded to Mr P's request by issuing a response in terms of section 17(1) of FOISA (and to that extent failed to comply with section 1(1) of FOISA). While noting the SPS's comment that the request in question was made to HMP Peterhead and not to SPS Headquarters, he cannot accept this as having any bearing on his findings on this point.

### *Request 2*

23. Mr P complained that the SPS failed to provide him with relevant sections of the Employee Code of Conduct to satisfy his request.



24. The Commissioner notes that the SPS provided Mr P with information taken from sections 4, 6 and 9 of the Code of Conduct in response to his information request, and information from section 3 of the Code of Conduct in response to his request for review. Mr P raised concerns that he should have been supplied with more information in response to his request and that the numbering of paragraphs taken from section 9 of the Code of Conduct, as supplied to him, had been intentionally altered.
25. The investigating officer carried out an exercise of copying and pasting sections 9.7 to 9.12 of the Code of Conduct into a new document, as had been done by the SPS when providing the information to Mr P, as a result of which the formatting automatically renumbered the paragraphs to 9.1 to 9.6 (as had happened in Mr P's version). Accordingly, the Commissioner is satisfied that the provision of the relevant paragraphs with the wrong numbers accredited thereto was not the result of any improper motive: on the other hand, the SPS might have noticed that the numbers had changed and taken remedial action.
26. In addition, having considered the content of the Code of Conduct against Mr P's request, the Commissioner is of the view that it would be reasonable to interpret the request as covering the information contained in section 7 of the Code of Conduct: this provides examples of the types of unacceptable conduct which may lead to disciplinary action and is clearly relevant to the question "what constitutes gross misconduct?". Given that no exemption under FOISA has been claimed in relation to this request, the information contained in this section (or an explanation of it) should also have been provided to Mr P in response to this request.
27. The Commissioner therefore finds that the SPS failed to comply fully with section 1(1) of FOISA in relation to this request. Given that the SPS provided Mr P with a full copy of the Code during the investigation, however, the Commissioner does not require the SPS to take any action in relation to this failure.

### *Request 3*

28. In relation to request 3, the SPS provided Mr P with what it considered to be the relevant information which fell within the scope of his request. In providing the information, the SPS explained to Mr P that the relevant information was contained within a number of sections of the CCTV Code of Practice and the relevant statements from these sections had been extracted for the purposes of provision to Mr P.
29. In correspondence with the Commissioner, Mr P requested that he be provided with the requested sections of the CCTV Code of Practice with paragraph and page numbers and a list of contents and appendices "to confirm he had received the information requested". This, however, was not part of his initial request and the Commissioner can only consider whether the SPS provided Mr P with all relevant information from the CCTV Code of Practice.



30. Having considered the content of the CCTV Code of Practice, the scope of Mr P's request and the information supplied to Mr P, the Commissioner is content that the SPS supplied Mr P with the information requested and in doing so complied with section 1(1) of FOISA. He would observe, however, that the provision of information in the format chosen here (blocks of "cut and pasted" text, largely deprived of context) may not be the means most likely to maintain the confidence of the applicant that all relevant information has been provided.

*Request 4*

31. In relation to request 4, the Commissioner is satisfied that this is in the form of questions (and not a request for recorded information) which have been answered by the SPS in correspondence with Mr P informing him that the Assistant Director of Prisons had not approved a written case and explaining the appropriateness of siting of the camera in question.

*Request 5*

32. In relation to his request 5, Mr P stated that he was dissatisfied with the response in that he was provided with copies taken from certain legislation and not copies of the relevant sections of the Guidance on Orderly Room Procedures which he had requested. He claimed the information provided was manifestly different from what he sought. In dealing with this request, however, the Commissioner must note that Mr P requested information on specific matters covered by the Guidance, which could have been met by provision of relevant information from the Guidance. The SPS could have met the request in another way if that still resulted in the provision of the required information.
33. In response to this request, the SPS informed Mr P that information regarding adjudication could be found in the Prisoners' Rules folder held within each hall of the prison. The SPS then referred Mr P to certain sections of the Prison and Young Offenders Institutions (Scotland) Rules 2006 which it believed would answer his request, providing him with an extract from these Rules with the relevant sections highlighted.
34. The Commissioner is satisfied that the information provided to Mr P was relevant to (and met) his request and not manifestly different as claimed. He would expect the principal information on the matters identified in request 5 to be contained in the relevant Rules. It would have been helpful, however, for any relevant supporting information contained in the Guidance on Orderly Room Procedures (or elsewhere) to have been provided at the same time. In this context, however, the Commissioner notes that (following Mr P's application to him) a copy of the Guidance on Orderly Room Procedures was placed within the library at HMP Dumfries, with a further copy being provided to Mr P.
35. Taking all matters into consideration, the Commissioner finds that whilst the response to request 5 could have provided a fuller explanation as to what was being provided, the SPS responded to the request in terms of section 1(1) of FOISA.





36. In conclusion, the Commissioner finds that the SPS failed to comply with section 10(1) of FOISA by failing to respond to Mr P's request within 20 working days; wrongly responded in terms of section 17 of FOISA in relation to request 1 (and thereby failed to comply with section 1(1)), and failed to comply with section 1(1) in responding to request 2. In all other respects the Commissioner finds that the SPS complied with part 1 of FOISA when responding to Mr P's request for information.

## DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr P.

The Commissioner finds that the SPS failed to comply with section 10(1) of FOISA by failing to respond to Mr P's request within 20 working days. He also finds that the SPS wrongly responded in terms of section 17 of FOISA in relation to request 1 (and thereby failed to comply with section 1(1) of FOISA) and failed to comply with section 1(1) of FOISA in responding to request 2.

In all other respects the Commissioner finds that the SPS complied with part 1 of FOISA when responding to Mr P's request for information. Considering the information was provided to Mr P by the close of the investigation, the Commissioner does not require the SPS to take any action.

## Appeal

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Should either Mr P 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.

**Margaret Keyse**  
**Head of Enforcement**  
**9 September 2010**



## 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

...

##### 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.

....



**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.

...