

Decision Notice 162/2020

HMP Edinburgh – failure to respond

The Applicant

Public authority: Scottish Prison Service

Case Ref: 202001323



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Prison Service (SPS) for information about: prisoners' mental welfare; health and safety incidents; prisoner assaults and complaints of bullying at HMP Edinburgh from January to July 2020.

This decision finds that the SPS failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the SPS failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

Background

1. The Applicant made an information request to the SPS on 8 August 2020.
2. The SPS did not respond to the information request.
3. On 29 September 2020, the Applicant wrote to the SPS, requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 4 November 2020, stating that he was dissatisfied with the SPS's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 17 November 2020, the SPS was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

8. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information.
9. It is a matter of fact that the SPS did not provide a response to the Applicant's request for information within 20 working days.
10. 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.
11. The SPS confirmed that it responded to the Applicant's requirement for review on 2 November 2020. It is a matter of fact that the SPS did not provide a response to the Applicant's requirement for review within 20 working days.
12. In Part 2 of Schedule 6 to the Coronavirus (Scotland) Act 2020, paragraph 6 permits the Commissioner to disregard a Scottish public authority's failure to comply with the above timescale, where he is satisfied that the failure was due to, among other things, the effect of coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effect of coronavirus). Any such failure must be reasonable in all the circumstances, the primary consideration in assessing what is reasonable being the public interest in responding to requests promptly.

13. The SPS submitted that the request was received at a time when its staffing levels were low and there was therefore more potential for error in its administrative functions. It submitted that its failure to comply in this case should be considered in the context of the Covid pandemic's impact on staff and systems. It did not, however, go on to explain in any detail how the pandemic had impacted on its ability to respond to information requests promptly, or why this should particularly be the case in August 2020 (when infection levels across Scotland were not notably high). In all the circumstances, bearing in mind the public interest in responding promptly, the Commissioner cannot regard the delays in this case as reasonable. He finds that the SPS failed to comply with sections 10(1) and 21(1) of FOISA in responding to the Applicant's request.
14. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
15. The SPS responded to the Applicant's requirement for review on 2 November 2020, two days before the applicant submitted his appeal, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
16. The Commissioner recommends that the SPS considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that the Scottish Prison Service (SPS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, the SPS failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of these failures, in response to the Applicant's application, given that a review outcome was issued on 2 November 2020.

Appeal

Should either the Applicant 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.

Enforcement

If the SPS fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SPS has failed to comply. The Court has the right to inquire into the matter and may deal with the SPS as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

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