

# Decision Notice

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## Decision 179/2015: Mr G and the Scottish Prison Service

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### Interference with staff mail

Reference No: 201501491

Decision Date: 12 November 2015



## Summary

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On 30 March 2015, Mr G asked the Scottish Prison Service (the SPS) for information relating to (a) an audit of prisoner mail protocols and (b) reported incidents of interference with staff mail. The SPS provided Mr G with a copy of the audit. In relation to interference with staff mail, the SPS stated disclosure of the information would breach the first data protection principle and the information was therefore exempt under section 38(1)(b) of FOISA.

Following an investigation, the Commissioner found that the information previously withheld by the SPS did not fall within the scope of Mr G's request. She accepted 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 30 March 2015, Mr G made a request for information to the SPS. He understood an audit had been undertaken of prisoner mail protocols. He believed interference with private staff mail had been identified in the course of this audit. Highlighting concerns about interference with his own correspondence, he asked the SPS for all and any information held in relation to (a) the audit and (b) reported instances of interference with private staff mail
2. The SPS responded on 27 April 2015. It provided Mr G with a copy of the audit. In relation to reported instances of interference with private staff mail, the SPS stated that this information was sensitive personal data and was exempt in terms of section 38(1)(b) of FOISA.
3. On 11 June 2015, Mr G wrote to the SPS requesting a review of its decision. In summary, Mr G submitted that much of the information would not be personal data and that, in any event, disclosure would be unlikely to breach the DPA.
4. The SPS notified Mr G of the outcome of its review on 7 July 2015. It provided summarised and redacted information on cases where staff mail had been misdirected, continuing to withhold information under section 38(1)(b) of FOISA.
5. On 13 August 2015, Mr G wrote to the Commissioner. Mr G applied to the Commissioner for a decision in terms of section 47(1) of FOISA. In summary, Mr G stated he believed further information was held and disputed the application of section 38(1)(b) of FOISA.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr G 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 9 September 2015, the SPS was notified in writing that Mr G had made a valid application. The SPS was asked to send the Commissioner the information withheld from him. The SPS provided the information and 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, with specific reference to identifying the information held (and falling within the scope of the request) and its reliance upon section 38(1)(b) of FOISA.
9. In its correspondence with the investigating officer, the SPS provided the Commissioner with the information it had identified as falling within the scope of Mr G's request, including that withheld under section 38(1)(b) of FOISA. Having considered this information, and the context in which it was created and held, the investigating officer questioned whether it fell within the scope of Mr G's request for information.
10. Following this, the SPS acknowledged that this information did not relate to interference with staff mail and therefore did not fall within the scope of Mr G's request. It provided an explanation of the searches it had carried out to establish that it held no further information.
11. During the investigation, the SPS wrote to Mr G, explaining that it had erroneously interpreted his request as relating to incidents concerning staff mail and not instances of interference with private staff mail. It apologised for this error and informed Mr G that it held no information regarding interference with staff mail.

## Commissioner's analysis and findings

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12. 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 G and the SPS. She is satisfied that no matter of relevance has been overlooked.
13. Having examined the information originally withheld by the SPS, on any reasonable interpretation of the word "interference", the Commissioner does not consider this information to fall within the scope of Mr G's request.
14. As the Commissioner is satisfied that this information does not fall within the scope of Mr G's request, she is not required to consider the application of section 38(1)(b) of FOISA. She will, however, consider whether the SPS held any other information falling within the scope of the request, in addition to that given to him.

### Information held by the SPS

15. 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, 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.

16. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority does or should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
17. The Commissioner has taken into account the submissions provided by Mr G, in which he provides reasons why he believes the SPS should hold further information.
18. In its submissions to the Commissioner, the SPS explained the searches and enquiries it undertook during the investigation to ascertain whether it held any information falling within the scope of Mr G's request, describing the areas searched and nature of these searches. It also provided an explanation of the outcome of each search, the conclusion being that no information was held.
19. Having considered all relevant submissions and the terms of Mr G's request, the Commissioner accepts that (during the investigation) the SPS took adequate, proportionate steps to establish whether it held any information falling within the scope of the request. She also accepts that it was reasonable in all the circumstances for the SPS to conclude that it did not hold any relevant information.
20. Given that no such information is (or was) held by the authority, the SPS had a duty to issue a notice in writing to that effect, to comply with the terms of section 17(1) of FOISA. Given that the Council failed to give such a notice to Mr G, the Commissioner finds that the SPS failed to comply with the requirements of section 17(1).
21. The Commissioner notes, however, that the SPS wrote to Mr G during the investigation and apologised for any previous error, confirming that no information was held. In the circumstances, she does not require the SPS to take any action.

## Decision

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The Commissioner finds that the Scottish Prison Service partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to notify Mr G, in line with section 17(1) of FOISA, that it did not hold information relating to interference with staff mail. The Commissioner does not require the SPS to take any action in respect of this failure, in response to Mr G's application.

## Appeal

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Should either Mr G 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**

**12 November 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.

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(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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