

Decision Notice

Decision 196/2014: Mr R and the Scottish Prison Service

Books and academic journals

Reference No: 201401229

Decision Date: 11 September 2014



Scottish Information
Commissioner

Summary

On 6 April 2014, Mr R asked the Scottish Prison Service (the SPS) for the information in 21 publications referenced in the response to a previous request he had made to the SPS. The SPS purported to withhold the information under section 25 of FOISA, on the basis that it was reasonably accessible to Mr R without requesting it under FOISA.

During the investigation, the SPS confirmed that it did not hold the information. It informed Mr R of this. The Commissioner accepted that the SPS did not hold the information, but found that the SPS had failed to give Mr R proper notice of this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement); 17(1) (Information 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

1. On 6 April 2014, Mr R made an information request to the SPS. He asked for information contained within the SPS's reply to a previous information request, specifically the 21 references to various academic publications made in that response.
2. The SPS responded on 9 April 2014. It refused to provide Mr R with the information he requested. The SPS argued that such information was available for purchase and therefore was otherwise reasonably accessible to him. He had been provided with details of each publication in response to his previous request. For this reason, the SPS informed Mr R it was withholding the information under section 25(1) of FOISA.
3. On 3 May 2014 Mr R wrote to the SPS requesting a review of its decision. He did not agree that the information was reasonably accessible to him.
4. The SPS notified Mr R of the outcome of its review on 22 May 2014. It confirmed its reliance on section 25(1) of FOISA.
5. On 1 June 2014, Mr R wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr R stated he was dissatisfied with the outcome of the SPS's review because he said he was not in a position to purchase the information, contrary to what the SPS had suggested.

Investigation

6. The application was accepted as valid. On 2 July 2014, the SPS was notified in writing that Mr R had made a valid application. The Commissioner confirmed that Mr R 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. 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 and answer specific questions. In addition to justifying its application of section 2591), the SPS was asked to confirm what information it held within the scope of Mr R's request and how it could be accessed. It was asked to comment on Mr R's submission regarding the cost of obtaining the information.
8. On 24 July 2014, the SPS provided submissions to the Commissioner, responding to the investigating officer's questions and detailing the searches carried out in order to determine what information it held. It confirmed at this point that it did not hold any of the information itself. Mr R was informed of this (by the SPS) on 1 August 2014.

Commissioner's analysis and findings

9. 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 R and the SPS. She is satisfied that no matter of relevance has been overlooked.

Information held by the SPS

10. 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 the 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. These qualifications do not apply in this case.
11. 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.
12. In its correspondence with the investigating officer, the SPS explained that the source of the 21 references was a document produced by the UK Ministry of Justice (MOJ). The Commissioner notes that the SPS provided Mr R with a copy of the MOJ document during the investigation, although it did not fall within the scope of the request under consideration here.
13. The SPS provided details of the steps it had taken in looking for the information. These included searches of the research library at SPS headquarters (a small, discrete resource) and its own electronic document management system. It also took advice from relevant subject specialists within the organisation. It concluded that it did not hold any of the information, confirming that it did not subscribe to any of the online resources covered by the request.
14. Having considered all relevant submissions and the terms of Mr R'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 that 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.

15. 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. The SPS failed to provide such a notice to Mr R, and therefore the Commissioner finds that the SPS failed to comply with the requirements of section 17(1).
16. The Commissioner notes that the SPS originally cited the exemption in section 25(1), on the grounds that the information he was seeking was otherwise accessible. In general terms, information must first be held before consideration can be given to whether or not it is exempt under FOISA. Had the SPS conducted proper searches upon receipt of Mr R's request, or even when it received his requirement for review, it should have discovered that it did not hold the information and issued the required notice under section 17(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) by failing to notify Mr R, in line with section 17(1) of FOISA, that it did not hold any information falling within the scope of his request.

Appeal

Should either Mr R 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.

Margaret Keyse
Head of Enforcement

11 September 2014

Appendix 1: 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.

...

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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