

# Decision Notice



Decision 077/2009 Mr Hector Riley and the Scottish Prison Service

SPS policy on staff absence and staff absence on a specified day

Reference No: 200900587

Decision Date: 9 July 2009

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**Kevin Dunion**

Scottish Information Commissioner

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Doubledykes Road  
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## Summary

Mr Hector Riley requested from the Scottish Prison Service (the SPS) details of SPS policy on staff absence to attend funerals and the number of staff absent from a named establishment on a specified date in order to attend a funeral. The SPS advised Mr Riley that the information was not held by it. Following a review, Mr Riley remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had dealt with Mr Riley's request for information in accordance with Part 1 of FOISA, by stating that, in terms of section 17(1) of FOISA, it did not hold the information requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is 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

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1. On 29 January 2009, Mr Riley wrote to the SPS requesting the following information:
  - a. Full details of SPS policy on staff absence to allow attendance at funerals of colleagues (to include written guidance and guidance contained within electronic communications).
  - b. The number of SPS uniformed and non-uniformed staff (including senior management) who availed of SPS policy and guidance to be absent in order to attend the funeral of a named individual on a specified date.
2. The SPS responded on 16 February 2009. In relation to Mr Riley's first request, the SPS stated that attendance at funerals is at the discretion of individual prison Governors. In relation to the second request, the SPS stated that it did not hold the information.



3. On 19 February 2009, Mr Riley wrote to the SPS requesting a review of the way it had responded to his information request. Mr Riley said that he would expect the scope of any discretion exercised by Governors to be set out formally in documentary form. He also contended that it was not credible that the SPS could be unaware of the number of its staff absent from work to attend a funeral.
4. The SPS carried out a review and notified Mr Riley of the outcome on 13 March 2009. It upheld its original decision in its entirety.
5. On 25 March 2009, Mr Riley 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. The application was validated by establishing that Mr Riley 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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7. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 1 April 2009 that an application had been received from Mr Riley and that an investigation into the matter had commenced. The Ministers were also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Ministers were asked what steps and specific searches the SPS had undertaken in order to establish that no relevant information was held by it. Subsequent references to submissions etc. being received from the SPS are therefore references to submissions etc. made by the Ministers' Freedom of Information Unit on behalf of the SPS.
8. The SPS responded on 29 April 2009 providing their comments and outlining the steps that had been taken to establish that no further information was held.
9. During the course of the investigation, the SPS wrote to Mr Riley providing further details of the nature of the informal arrangement within the SPS which permits as many staff as possible to attend the funeral of a deceased colleague. However, Mr Riley indicated to the Commissioner that he was still dissatisfied with the response provided by the SPS to his information request.



## Commissioner's analysis and findings

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

### Whether the information requested by Mr Riley is held by the SPS

11. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
12. In its initial response of 16 February 2009, the SPS informed Mr Riley that staff absence for attendance at colleagues' funerals is at the discretion of Governors in charge (request a)). In relation to the information requested concerning the numbers of staff attending a funeral on the date specified by Mr Riley (request b)), the SPS stated that, in accordance with section 17 of FOISA, it did not hold the information.
13. In its response to Mr Riley's request for a review of the original decision, the SPS stated (in relation to request a) that, "There is no definitive guide or policy regarding staff attendance at funerals either in writing or via electronic communications. The attendance at funerals of SPS staff is at the discretion of the Governor in charge." In relation to request b), the SPS confirmed that it did not hold the requested information.
14. In order to determine whether the SPS dealt with Mr Riley's request correctly, the Commissioner must establish whether, at the time it received Mr Riley's request, the SPS held any information which would fall within the scope of the request.
15. In their submissions to the Commissioner, the SPS explained the steps they had taken in order to ascertain if any relevant information was held.
16. The SPS stated that staff in the relevant business areas of the Human Resource Directorate (which has responsibility for all Human Resource policies and procedures) and the Prisons Directorate (which has responsibility for operational and security issues within the SPS) were contacted. Both Directorates confirmed that no relevant policy or procedures exist. Additionally, staff checked the SPS intranet which contains a list of SPS Human Resource policies. This search confirmed that no policy was in place.
17. The SPS explained that attendance at such funerals is not contained in any policy manual and is solely a matter for the discretion of the Governor and, in this case, the Governor would have been satisfied from information provided verbally from managers that there was suitable cover on the day in question to manage the prison without the need to record details of individuals who were permitted to attend the funeral. The SPS also explained that, as managers were satisfied that they had sufficient staff to supervise the whole prison, and as those attending the funeral were representing the SPS, there would be no need or requirement to actually record the movements of all staff employed that day.



18. In response to a specific question from the investigating officer, the SPS also stated that it would not be possible to obtain or collate the requested information concerning attendance at the funeral from other pieces of information. The SPS submitted that the only way that the information could be obtained would be by approaching every member of staff and asking them whether or not they had attended. The SPS contended that this would in effect be creating new information.
19. In further correspondence with the SPS, the investigating officer again queried whether it would be possible to obtain the information sought by Mr Riley concerning the number of staff absent to attend the funeral from other information held by the SPS, for example by subtracting the number of staff in attendance on the specified day from the number previously rostered to be on duty (after allowing for those absent due to sickness and annual leave). In response, the SPS stated that, whilst there was a record of staff rostered to be on duty on the day in question, it did not show which officers had volunteered to remain on duty in order to allow colleagues to attend the funeral. The SPS reiterated that no record had been kept of staff attendance at the funeral.
20. The investigating officer subsequently sought clarification from the SPS on how information concerning attendance at the funeral was passed from managers in the prison to the Governor and whether this would have been recorded in written or electronic form. In response, the SPS stated that, at various hall and other staff meetings across the establishment, staff were asked to indicate whether or not they intended to attend the funeral. At that time, the level of staff that would remain at work for the duration of the funeral was also confirmed. Functional Heads and the Governor were then informed verbally that sufficient staff were prepared to remain in the prison to allow it to operate safely for the duration of the funeral service. The SPS again confirmed that the SPS has no written or electronic records of staff attendance at the funeral service.
21. The Commissioner has considered the submissions made by the SPS and their explanation of the steps taken in order to ascertain that the information in question is not held.
22. The Commissioner is satisfied that the SPS does not hold any written policy regarding staff absence for attendance at the funeral of colleagues and is satisfied that it has taken all reasonable steps to establish whether any relevant, recorded information is held. Given that the information regarding absence on the specified day was communicated verbally between senior management and the Governor within the prison, the Commissioner accepts that this information is also not held by the SPS.
23. The Commissioner is therefore satisfied that the SPS has complied fully with the provisions of FOISA in dealing with Mr Riley's request.



## 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 Riley.

The Commissioner is satisfied that the SPS does not hold the information requested by Mr Riley and that it was therefore justified in giving him a notice in terms of section 17(1) of FOISA in response to his request.

## Appeal

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Should either Mr Riley 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.

**Margaret Keyse**  
**Head of Enforcement**  
**9 July 2009**



## 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.

##### 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.