

Decision Notice



Decision 115/2012 Mr R and the Scottish Prison Service

Policy on family contact and access to postage stamps

Reference No: 201201099

Decision Date: 9 July 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle

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Summary

Mr R requested from the Scottish Prison Service (the SPS) information about the SPS's documented policies on family contact and access to postage stamps. The SPS replied, stating that it did not hold any information covered by the terms of Mr R's request. The SPS provided some information which it did not consider to be policy, but which it believed to be relevant to Mr R's request. Following a review, Mr R remained dissatisfied and applied to the Commissioner for a decision.

After an investigation, the Commissioner found that the SPS had dealt with Mr R's request for information in accordance with Part 1 of FOISA, by giving notice that it did not hold any information falling within the scope of Mr R's request. She did not require the SPS to take any action.

Relevant statutory provisions

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 6 March 2012, Mr R wrote to the SPS, asking it to provide "all SPS policy documentation and GMAs regarding family contact and access to postage stamps". (GMAs are Governor and Managers Action Notices, which are used to advise and instruct Governors and Managers of matters of which they need to be aware or take note.)
2. The SPS responded on 4 April 2012. It stated that after a reasonable search of its document library it had not found any GMAs or policy documents with "family contact" or "postage stamps" in the title. It had concluded that it did not hold the information requested by Mr R.



3. In line with its duty to provide advice and assistance under section 15(1) of FOISA, the SPS advised Mr R that it had considered whether it held any relevant information other than policy or GMAs. It provided Mr R with a copy of the SPS standards for assurance on family contact, and information about the provision of writing materials and payment of postage from the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (Appendix 2) (referred to in this decision as "the Rules").
4. On 18 April 2012, Mr R wrote to the SPS requesting a review of its decision. He found it inconceivable that the SPS did not hold policy documentation or GMAs on these matters.
5. The SPS notified Mr R of the outcome of its review on 21 May 2012. It confirmed its original decision that the information requested was not held. It explained that the decision whether a prisoner should be allowed stamps was a local one, made at the Governor's discretion in accordance with Part 7 of the Rules.
6. On 30 May 2012, Mr R 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.
7. The application was validated by establishing that Mr R 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. The case was then allocated to an investigating officer.

Investigation

8. 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.
9. In particular, the SPS was asked about a reference in the information provided to Mr R to a "visits policy and procedures" covering visits by family and friends, and whether the information in this policy document might fall within the scope of his request. The SPS was also asked to provide a list of GMA titles, and to explain how it established that it did not hold any other information about its policy on family contact.
10. The relevant submissions received from both the SPS and Mr R will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

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

Section 17 of FOISA – Notice that information is not held

12. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
13. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
14. In his application to the Commissioner, Mr R explained why he disagreed with the SPS's interpretation of the Rules. He argued that "international norms and guidelines" emphasised the desirability for prisoners to have close links with civil society and the need to make the conditions of imprisonment as close as possible to those in normal society. In the circumstances, he found it improbable that the SPS did not have any policy documentation or GMAs relating to the information he had requested.
15. In its submission to the Commissioner, the SPS advised that it had carried out searches on two occasions and had already provided the only information identified as falling within the scope of Mr R's request. The SPS provided the Commissioner with a list of the search terms used, and confirmed that it also had discussions with staff in two prisons to find out whether they were aware of any relevant policies or GMAs.
16. The SPS accepted that the information provided to Mr R included a reference to a "visits policy and procedures", but advised that this reference was contained within a set of known standards with which prisons were expected to comply: while this could be considered as "policy" in its wider sense, there was no written policy.
17. The SPS provided a list of some 400 GMAs from its SharePoint library, advising that not all would still be held.
18. The SPS advised that there might have been a misunderstanding or different interpretation of "policy" in relation to Mr R's request. It explained that it had often used this term to describe standard expected procedures rather than a written policy. The SPS advised that there was discretion for Governors on a number of matters within the Rules, but only where these matters were raised with them through standard procedures. The SPS took the view that Mr R's dissatisfaction with a particular matter or decision could be dealt with through its complaints process.



19. Having considered the submissions and supporting information provided by the SPS, the Commissioner accepts that it was reasonable in all the circumstances for the SPS to conclude that it did not hold information which fell within the scope of Mr R's request. She is therefore satisfied that the the SPS was correct to give Mr R notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

DECISION

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

Appeal

Should either Mr R 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 July 2012



Appendix

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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