

Decision Notice

Decision 086/2014 Mr P and the Scottish Prison Service

Meeting notes and enquiries regarding a complaint: failure to respond within statutory timescales

Reference No: 201400401

Decision Date: 14 April 2014



Scottish Information
Commissioner

Summary

On 26 November 2013, Mr P asked the Scottish Prison Service (SPS) for information contained in notes taken during a specific meeting and information about enquiries regarding issues raised in a complaint. 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 Mr P's requirement for review within the timescale set down by FOISA.

Background

Date	Action
26 November 2013	Mr P made an information request to the SPS.
	The SPS did not respond to the information request.
18 January 2014	Mr P wrote to the SPS requiring a review of its failure to respond.
4 February 2014	Mr P received a response to part of his requirement for review but no response to the other part.
27 February 2014	Mr P wrote to the Commissioner's Office, stating that he was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5 March 2014	The SPS was notified in writing that an application had been received from Mr P and was invited to comment on the application.
19 March 2014 and 9 April 2014	The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

1. The SPS explained that, due to a misunderstanding, Mr P's request was not logged and a response under FOISA was not provided. The SPS acknowledged that the response provided to Mr P's requirement for review on 4 February 2014 contained a typographical error as it referred to 10 January 2014, not 18 January 2014 when he actually requested a review. It also acknowledged that its response only covered part of Mr P's request.
2. The SPS issued a second response to Mr P's requirement for review on 9 April 2014, which addressed the second part of his request. A copy of this was provided to the Commissioner.
3. 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. This is subject to qualifications which are not relevant in this case.

4. It is a matter of fact that the SPS did not provide a response to Mr P's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. 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. Again, this is subject to qualifications which are not relevant in this case.
6. It is a matter of fact that the SPS did not provide a full response to Mr P's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The Commissioner acknowledges that the SPS provided a partial response to Mr P's requirement for review on both 4 February 2014 and 9 April 2014, and that the SPS has now reviewed its response to both parts of his request.
8. The Commissioner notes that the SPS did not inform Mr P of his rights of appeal in its response of 9 April 2014, as required in section 21(10) of FOISA.
9. Given that the SPS responded to the remaining part of Mr P's requirement for review on 9 April 2014, the Commissioner does not require it to take any further action in relation to Mr P's application.

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) in responding to the information request made by Mr P. In particular, the SPS failed to respond to Mr P's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. In failing to inform Mr P of his rights in its response to his requirement for review dated 9 April 2014, the SPS failed to comply with section 21(10) of FOISA.

Given that the SPS has now responded to the second part of Mr P's requirement for review, the Commissioner does not require the SPS to take any action in response to these failures.

Appeal

Should either Mr P 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. The appeal must be made within 42 days after the date of intimation of this decision.

Alison Davies
Deputy Head of Enforcement
14 April 2014

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