



Scottish Information  
Commissioner

**Decision 195/2007 Mr L and the Scottish Prison Service**

***Evaluation of treatment programmes for sex offenders at Peterhead  
Prison***

**Applicant: Mr L  
Authority: Scottish Prison Service  
Case No: 200700510  
Decision Date: 29 October 2007**

**Kevin Dunion  
Scottish Information Commissioner**

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## Decision 195/2007 Mr L and the Scottish Prison Service

### *Information on the evaluation of treatment programmes for sex offenders at Peterhead Prison*

#### Relevant Statutory Provisions and other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 16(1) (Refusal of request); 17(1) (Information not held) and 38(1)(b), (2) and (3) (Personal information)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

#### Facts

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Mr L asked a number of questions about the sex offender treatment programmes at Peterhead Prison and their evaluation. The Scottish Prison Service (the SPS) provided brief answers to all his questions. Mr L complained that in answering two of his questions (questions 4 and 5) the SPS had withheld the exact figures he had asked for, and that the answer to another question (question 6) was unsatisfactory and did not include all of the information available to the SPS.

The SPS upheld its response after review, and Mr L then applied to the Scottish Information Commissioner for a decision on the case.

During the investigation, the Scottish Ministers undertook to provide submissions on behalf of the SPS, which is an agency of the Scottish Government. The Ministers took the view that in relation to question 6, the information requested was not held, and that the response to Mr L should have referred to section 17(1) of FOISA. Mr L was informed of the revised position.

The SPS later provided exact figures in response to questions 4 and 5. The information which had been provided to Mr L in relation to question 6 was also reviewed, and an updated response to this part of his request was provided.

Mr L was asked whether he would be content to withdraw his application for a decision. However, he asked for a decision on how his request had initially been dealt with, and on the decision to cite section 17(1) in relation to question 6.



## Background

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1. On 3 July 2006, Mr L wrote to the SPS with six questions relating to the sex offender treatment programmes at HM Prison Peterhead, and their evaluation.
2. On 31 July 2006, the SPS provided a response to each of Mr L' questions.
3. Questions 4 and 5 of Mr L' request concerned certain statistical information about former prisoners who had been accommodated within the 'Peterhead Unit'. The SPS decided that, as the numbers of individuals represented by the statistics was very small, some of the answers should be provided in terms of "<5", i.e., less than five.
4. In question 6, Mr L asked:  
  
"What plans does the SPS have to publish 'STOP', &c evaluation data?"  
  
(For clarity, it should be noted that "&c" is an abbreviation for 'et cetera'.)
5. In its response of 31 July 2006, the SPS provided Mr L with a short statement to the effect that an evaluation report on the STOP programme would be published when all necessary data analyses have been undertaken and completed.
6. Mr L was not satisfied with the response to his questions 4, 5 and 6, and on 7 September 2006 he asked for a review to be carried out by the SPS.
7. The SPS responded on 6 October 2006. It confirmed the responses previously provided to questions 4 and 5, and provided a small amount of additional information in relation to question 6.



8. Mr L remained dissatisfied with the SPS's response, and on 3 April 2007 he applied to me for a decision on the matter, in terms of section 47(1) of FOISA. In his application he raised four complaints for consideration in my Decision Notice. These were:
- a) that in its initial response the SPS had failed to provide any basis for withholding information in terms of FOISA, in response to questions 4 and 5;
  - b) that the SPS had failed to comply with FOISA in providing meaningless information in response to question 6, giving the impression that the SPS was contemptuous of the request and not accountable to the public in terms of FOISA;
  - c) that, at the review stage, the SPS was wrong to withhold the absolute numbers of prisoners requested in questions 4 and 5 on the basis that the information might identify individuals and thereby amount to exempted personal information;
  - d) that whilst the SPS had provided marginal additional information at the review stage of the request, it should have provided specific information about the remit and schedule or programme of work being carried out.
9. Mr L' application was validated after establishing that he had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

## The Investigation

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10. As the SPS is an agency of the Scottish Government, a letter was sent to the Ministers on 18 May 2007, informing them that an application had been received and that an investigation into the matter had begun. The Ministers responded to this letter on 8 June 2007. The case was then allocated to an investigating officer.
11. In their letter of 8 June 2007, the Ministers advised that section 17(1) should have been cited when responding to question 6 of Mr L' request.
12. Mr L was informed of the revised position in relation to question 6. In a letter dated 9 July 2007, he stated that he did not accept that the SPS was entitled to reply upon section 17(1) in relation to question 6. He believed it was reasonable to assume from all the circumstances and from information available from other sources (listed in his letter), that the SPS did hold the information he had asked for.



13. On 20 July 2007, the Ministers informed the investigating officer that the SPS was prepared to disclose the actual numbers in response to questions 4 and 5 of Mr L' request. This information was supplied to Mr L on 2 August 2007.
14. After discussion with the investigating officer, the SPS reviewed the information it held in relation to the evaluation of the sex offender programmes at Peterhead, and agreed that a short progress update should be provided to Mr L. This was sent to him on 20 August 2007 in a letter from my Office.
15. Mr L was asked whether he might be prepared to withdraw his application for a decision, having received full answers to questions 4 and 5 and some additional information in relation to question 6. However, in a letter dated 28 August 2007, Mr L advised that a decision notice was still required. He highlighted the fact that the full answers to questions 4 and 5 had been provided more than a year after he made his request. He also asked me to consider the decision to cite section 17(1) in relation to question 6.
16. The Ministers were then asked to comment on the issues raised by Mr L in his application and to provide any additional comments they wished me to consider in reaching a decision. The Ministers responded on 25 September 2007.

## **The Commissioner's Analysis and Findings**

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17. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr L and the SPS (or the Ministers on behalf of the SPS), and I am satisfied that no matter of relevance has been overlooked.

### **Questions 4 and 5**

18. As noted previously, questions 4 and 5 of Mr L' request concerned certain statistical information about former prisoners who had been accommodated within the 'Peterhead Unit'. The SPS initially decided that, as the numbers of individuals represented by the statistics was very small, some of the answers should be provided in terms of "<5", i.e., less than five. In its review response (6 October 2006), the SPS stated that to give exact numbers would identify the individuals concerned. The SPS stated that section 38(1)(b) of FOISA provides that personal data is exempt from disclosure.



19. The exemption in section 38(1)(b) is rather more complex than was indicated by the SPS. It exempts information which is personal data but qualifies this with certain conditions (the full text of section 38(1)(b) is available in the appendix to this decision notice). Information can, for example, be withheld under this exemption if it is personal data (as defined by the Data Protection Act 1998 (the DPA)) and if disclosure would contravene any of the data protection principles.
20. In terms of this Decision Notice, I am required to consider whether the SPS complied with the provisions of FOISA. Section 16(1) specifies the information which a Scottish public authority must provide when refusing to provide the information requested by an applicant. Under section 16(1)(d), the authority must state why the exemption applies (if not otherwise apparent). In this case I find that the SPS did not provide sufficient explanation of why the information was exempt under section 38(1)(b), as it did not explain how any of the data protection principles would be contravened by its disclosure. The SPS therefore failed to comply with section 16(1) of FOISA.
21. As the information has now been released, I do not propose to examine further the question of whether the exact figures requested by Mr L were, in fact, personal data, or whether the exemption in section 38(1)(b) was correctly applied.

### **Question 6**

22. Mr L' sixth question was:

“What plans does the SPS have to publish ‘STOP’, &c evaluation data?”
23. As already noted, the SPS responded (31 July 2006) with a short statement to the effect that an evaluation report on the STOP programme would be published when all necessary data analyses have been undertaken and completed.
24. In his request for review, Mr L stated that he found this response to be entirely unsatisfactory, arguing that an appropriate response would have included information such as terms of reference of the analysis; methodologies; projected and actual cost to date of the exercise; information about the composition and leadership of the research team conducting the analysis; projected completion and publication dates and associated press releases.



25. Before going on to consider whether the SPS's response to question 6 complied with FOISA, I will note that I do not consider that all of the types of information listed above would reasonably require to be considered in answering a question about plans to publish evaluation data. I take the view that Mr L was attempting to broaden the scope of his request beyond the question he had initially asked.
26. In its review response of 6 October 2006, the SPS provided some additional detail in the form of a brief update on progress regarding the establishment of data links with the Scottish Criminal Records Office, which was necessary before the evaluation could proceed.
27. In his application for a decision, Mr L complained that the SPS should have provided specific information about the remit and schedule or programme of work being carried out. However, in his information request, Mr L asked only about plans to publish data, not about the research remit or the evaluation process. Again, it appears to me that he was extending the scope of his request further than could reasonably be accepted.
28. However, I must consider whether the SPS' response to question 6 complied with the provisions of FOISA.
29. During the investigation, the Ministers (acting on behalf of the SPS) submitted that section 17 of FOISA should have been cited in relation to question 6. The reason given was that the evaluation of both the 'STOP' and the 'SOTP' programmes was currently ongoing.
30. On 3 August 2007 the Ministers provided my Office with an update on progress with the programme evaluation, and later agreed that a summary of the information, indicating possible publication dates for the data, should be provided to Mr L. This was done on 20 August 2007.
31. In relation to the initial response provided to Mr L, the Ministers were asked to explain what information was available to the SPS at the time he made his request, such as a timetable or programme of work relating to the evaluation process.
32. The Ministers felt unable to add anything of substance to their response of 3 August 2007 and a follow-up email sent on 7 August 2007. They stated that the information provided to Mr L at all stages has been the best available at any particular time. They pointed out that the recent information about the evaluation plans (which was supplied to Mr L in summary, see paragraph 30 above) was not known at the time of the initial response from the SPS in July 2006.



33. I accept that Mr L has now received information which gives him projected dates for publication of the evaluation data, and which indicates certain factors which may affect this timetable. I further accept that it is likely that all this information, at least in its most recent form, was not available when responding to Mr L' request.
34. However, the initial response to question 6 (upheld at review) gave no indication of the likely publication date or reasons why no likely date could yet be identified. This is information which I would expect to have been supplied, if it was available, in response to question 6.
35. It seems unlikely that, as late as October 2006 (when the review of Mr L' request was carried out), the SPS held no information about the projected date for publishing the evaluation data. Evaluation had been ongoing since June 2003. I note that the SPS was able to provide a projected publication date of 2008 in a letter sent to Mr L on 30 January 2007.
36. The Scottish Ministers have chosen not to provide any submission on the extent of the information available to the SPS in answering Mr L' request.
37. On the evidence available to me, I cannot uphold the SPS's position that information reasonably covered by Mr L' sixth question was not held, in terms of section 17 of FOISA. As Mr L has now received information which answers his request, I will not give this issue further consideration in this Decision Notice.

## Decision

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I find that the Scottish Prison Service (the SPS) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr L. In failing to provide sufficient explanation of why certain information was exempt under section 38(1)(b), the SPS failed to comply with section 16(1) of FOISA.

I do not require the SPS to take any action in respect of this Decision Notice.





## **Appeal**

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Should either Mr L 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**29 October 2007**



## 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.

##### 16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a “refusal notice”) which -
  - (a) discloses that it holds the information;
  - (b) states that is so claims;
  - (c) specifies the exemption in question; and
  - (d) states (if not otherwise apparent) why the exemption applies.

##### 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.



## 38 Personal information

- (1) Information is exempt information if it constitutes –
  - (...)
    - (b) personal data and either the condition mentioned in subsection (2) (the “first condition”) or that mentioned in subsection (3) (the “second condition”) is satisfied;
    - (...)
- (2) The first condition is –
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
    - (i) any of the data protection principles; or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress); and
  - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33(A)(1) of that Act (which relate to manual data held) were disregarded.
- (3) The second condition is that, by virtue of any provision of Part IV of that Act, the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).