

Decision Notice



Decision 280/2013 Mr X and the Scottish Prison Service

Hall Regime Plan

Reference No: 201301933

Decision Date: 9 December 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 8 June 2013, Mr X asked the Scottish Prison Service (the SPS) for information about a hall regime. The SPS informed Mr X that a copy of the hall regime was already available to him. In its review response, the SPS provided Mr X with a copy of the Hall Regime Plan.

Following an investigation, the Commissioner found that the SPS had partially failed to deal with Mr X's request for information in accordance with Part 1 of FOISA.

The Commissioner found that the SPS had complied with Part 1 of FOISA in providing Mr X with the information requested, but that its response failed to comply with the requirements of section 19 of FOISA. 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); 19 (Content of certain notices); 21(1) and (4)(b) (Review by public authority)

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 8 June 2013, Mr X asked the SPS for (amongst other things not the subject of this decision) all information about the regime currently in operation in a named prison hall.
2. The SPS responded on 9 June 2013 informing Mr X that the Hall Regime Plan was available from landing staff.
3. On 9 July 2013, Mr X requested a review of the SPS's decision as he was unable to locate a copy of the Hall Regime Plan as being visible or otherwise published within the hall. Mr X also noted that the SPS had not told him about his rights to seek a review or to appeal, should he be dissatisfied with outcome of his request.



4. The SPS notified Mr X of the outcome of its review on 31 July 2013. The SPS agreed that the request should have been processed in a formal manner in line with FOI guidelines and apologised for this failure. It enclosed a copy of the Hall Regime Plan.
5. On 27 August 2013, Mr X wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council'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 X made a request for information to a Scottish public authority and 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

7. The investigating officer contacted the SPS on 12 September 2013, 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. The SPS was asked to confirm whether the Hall Regime Plan provided was the regime in operation, and to provide submissions to support its position, together with comments on its handling of the request.
8. The SPS responded on 3 October 2013.

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 X and the SPS. She is satisfied that no matter of relevance has been overlooked.
10. Mr X appealed to the Commissioner on the following grounds:
 - a) the Hall Regime Plan provided was inaccurate, incomplete or outdated and was not recognised as that actually being delivered;
 - b) the SPS's initial response should not have informed him that the Hall Regime Plan was otherwise accessible to him;
 - c) the initial response failed to offer advice about his right to seek a review and to appeal to the Commissioner.
11. The Commissioner will consider each of these points in turn.



The information provided to Mr X

12. In its submissions, the SPS confirmed that the version of the Hall Regime Plan that was held by the SPS on the 8 June 2013 was dated 11 January 2012 and was the version provided to Mr X.
13. The SPS responded to Mr X's comments that he considers that the Hall Regime Plan is inaccurate, incomplete and outdated information. The SPS commented that the hall regime that is operated within the accommodation block is not the same as recorded in the Hall Regime Plan, but that the information provided to Mr X was the information which the SPS held, and which fell within the scope of his request. The SPS confirmed that there is no other Regime Plan.
14. The SPS explained that the Hall Regime Plan is the responsibility of the managers of the accommodation block and was known to the managers and the staff who have worked in that area for a period of time. The SPS commented that it is not expected that all staff would be aware of the Hall Regime Plan, as some will have moved to work in that area in recent times and "learned" the regime without reference to the document.
15. In relation to Mr X's complaint that the information was incomplete, the SPS explained that a copy of the Hall Regime Plan was held in the hall and so no further searches were considered necessary given the "uniqueness" of the request and document.
16. Having considered the SPS's submissions and the copy of the Hall Regime Plan provided by the SPS, the Commissioner has found that the SPS provided Mr X with the information that fell within scope of his request. It is not within the Commissioner's remit to comment as to whether the information in the Hall Regime Plan is an accurate representation of the regime in operation; her locus is in whether the information requested is held, and appropriately treated under the terms in FOISA.

The initial response to the request

17. Mr X complained that the SPS was wrong to state in its initial response to his request, that the information he asked for was already available (otherwise accessible) to him.
18. Section 21(4)(b) of FOISA provides that, when carrying out a review, an authority may substitute for any decision a different decision, in relation to the request for information to which the requirement for review relates. FOISA therefore allows a Scottish public authority to alter its original position at review.
19. In this case, the SPS's review concluded that the request had not been handled correctly and the information should have been (and was subsequently) provided to Mr X.
20. The Commissioner has concluded that the SPS complied with the requirements of section 21(1) of FOISA, as under section 21(4)(b) it was permitted to substitute a different decision in its review response.



Information about rights of appeal

21. Section 19 of FOISA requires that a notice under section 16(1) of FOISA must contain particulars-
 - (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
 - (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).
22. The Commissioner notes the SPS's initial response of 9 June 2013 did not provide Mr X with details of his right to request a review and to apply to the Commissioner for a decision. Therefore, the Commissioner has concluded that the SPS failed to comply with section 19 of FOISA in responding to Mr X's request.
23. The Commissioner also notes that this did not hinder Mr X from submitting a request for review to the SPS, and that the SPS's review response provided him with details of how to appeal the review decision to the Commissioner. The Commissioner recommends that the SPS takes note of its failure to include all required information in its initial response, but does not require it to take further action.

DECISION

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

The Commissioner finds that the SPS provided Mr X with the information he requested in line with section 1(1) of FOISA and was entitled to substitute a different decision in its review response in line with section 21(4)(b) of FOISA.

The Commissioner also finds that by failing to provide information about the rights of review and appeal in its initial response to Mr X, the SPS failed to comply with section 19 of FOISA. The Commissioner does not require the SPS to take any action in respect of this failure.



Appeal

Should either Mr X 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.

Rosemary Agnew
Scottish Information Commissioner
9 December 2013



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.
- ...

19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- ...
- (4) The authority may, as respects the request for information to which the requirement relates-
- ...
- (b) substitute for any such decision a different decision; or
- ...