

Decision Notice



Decision 105/2014 Mr X and the Scottish Prison Service

Whether a request was vexatious

Reference No: 201302810
Decision Date: 12 May 2014

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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



Summary

On 16 April 2013, Mr X asked the Scottish Prison Service (the SPS) for information relating to a review of a Governors and Managers Action Notice (GMA) which he understood to have taken place. The SPS provided some information to Mr X in response to his review requirement, but subsequently reached the view that his request was vexatious. Following an investigation, the Commissioner did not accept that the request was vexatious. As Mr X accepted that the SPS did not hold the information, she did not require the SPS to take any further action.

The Commissioner also identified failures (i) to respond to Mr X's information request within the timescale specified in FOISA and (ii) to give Mr X information on his rights when responding to his request for review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 10(1)(a) (Time for compliance); 14(1) (Vexatious or repeated requests); 21(5) and (10) (Review by Scottish 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 16 April 2013, Mr X wrote to the SPS requesting:
... all and any information held by the SPS relative to the review of GMA 3A/12 which was due to have taken place by March 2013.
2. By way of background, this GMA (which deals with prisoners' access to their own funds) is referred to in Decision 182/2012¹. The Decision makes mention of a review to be carried out by 18 March 2013.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201201419.aspx>



3. Having received no substantive response to his request, Mr X wrote to the SPS on 28 May 2013, requesting a review in respect of its failure to respond.
4. The SPS notified Mr X of the outcome of its review on 25 June 2013. It provided him with copies of GMA 3A/12 and GMA 3A/12 (Amended), explaining that the GMA had been amended solely to incorporate a change to the numbering of the Prison Rules.
5. The SPS also noted that the GMA referred to review by 18 March 2012, under the heading "Impact Assessment". This, it explained, referred to a review of the Equality & Diversity Impact Assessment, not of the GMA itself. It went on to inform Mr X that the relevant Impact Assessment had not required to be reviewed, as there were no changes which would have had an impact on this GMA.
6. On 25 November 2013, Mr X 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 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

8. The investigating officer subsequently 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. In particular, the SPS was asked to provide details of the searches carried out for any information that might fall within the scope of Mr X's request.
9. In its response to the investigating officer, the SPS stated that it was now of the view that Mr X's request should be considered vexatious in terms of section 14(1) of FOISA.
10. The investigating officer therefore obtained submissions from the SPS on its application of section 14(1).
11. Mr X also provided the investigating officer with submissions, setting out why he was of the view that his request was not vexatious.



Commissioner's analysis and findings

12. 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.

Section 14(1) - Vexatious or repeated requests

13. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
14. FOISA does not define the word "vexatious". In her guidance², the Commissioner considers the following factors to be relevant in reaching the conclusion that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
- It would impose a significant burden on the public authority
 - It does not have a serious purpose or value
 - It is designed to cause disruption or annoyance to the public authority
 - It has the effect of harassing the public authority
 - It would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
15. The Commissioner recognises that (depending on the circumstances) other factors may be relevant.
16. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, she acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

The SPS's submissions

17. The SPS confirmed that GMA3A/12 had not been the subject of either an impact assessment review under the Equalities Act 2010, or a more general review. With a view to setting this case in context, the SPS referred to *Decisions 182/2012, 135/2013*³ and *151/2013*⁴, all of which arose from requests made by Mr X and related to GMA 3A/12.
18. The SPS also made reference to other correspondence with Mr X on related matters. It stated that Mr X had raised legal proceedings in court in relation to the policy in question.

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

³ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201300967.aspx>

⁴ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201300344.aspx>



19. The SPS argued that it was explained to Mr X in the course of his previous requests, and within the information released in the light of *Decision 151/2013*, that:
- no impact assessment was completed when the policy was drafted (this, it believed, should have been apparent from the case which resulted in *Decision 182/2012*);
 - an impact assessment was completed in June 2012 (and a copy was provided to Mr X);
 - there was an error in GMA 3A/12: the review date should have read March 2013
 - the information disclosed in the light of *Decision 151/2013* showed that the SPS policy had changed, in that a further impact assessment would now only be required if there was a change to the policy itself.
20. In the light of the above, the SPS concluded that Mr X's request was designed to cause disruption or annoyance to the authority.

Submissions from Mr X

21. Mr X submitted that the design or purpose of the request should be determined according to facts within the requester's knowledge at the time the request was made. He did not accept the SPS's position that a request made on 16 April 2013 could have been designed to cause disruption and annoyance, on the basis of knowledge of matters not imparted to him until sometime after he made that request.
22. Mr X submitted that he had made his request based on what he considered to be an entirely legitimate expectation, that the SPS would review GMA 3A/12 by 18 March 2013, as indicated in *Decision 182/2012*.
23. He expressed the view that it would have been helpful, in view of his evident interest in the matter, if the SPS had informed him, before he made the present request, that no review of the GMA had been carried out.

The Commissioner's conclusions

24. The SPS's application of section 14(1) of FOISA is focused on a perceived intention to cause disruption or annoyance in making the request. The Commissioner must therefore consider whether that could reasonably be considered to have been Mr X's intention, when making his request on 16 April 2013. Having considered all the circumstances, she is of the view that the SPS has failed to provide cohesive arguments to this effect.
25. Mr X was clearly aware that the policy was due to be reviewed by March 2013. That was apparent from *Decision 182/2012* and appears to have been the basis on which he made the present request (in April 2013). It may also have been apparent that no impact assessment was completed when the policy was drafted, but it is not clear to the Commissioner why that should contribute to the present request being vexatious: this request relates to a subsequent review.



26. Mr X was provided with a copy of the 2012 impact assessment when the SPS responded to *Decision 151/2013*. The SPS has also acknowledged that its changed approach to impact assessments was only imparted to Mr X when it responded to that decision. That was on 4 September 2013, a considerable time after it carried out its review in this case. In addition, the Commissioner has seen nothing to suggest that Mr X could have been aware, before the SPS responded to his requirement for review in this case, that the earlier references to a review were intended to relate to the impact assessment rather than the GMA itself.
27. In all the circumstances, given what it would be reasonable to interpret as Mr X's state of knowledge at the time he made his request (or, for that matter, when he made his requirement for review), the Commissioner is not persuaded that the present request was intended to disrupt or annoy the SPS. She has no other submissions of substance in support of the SPS's application of section 14(1)
28. The Commissioner therefore finds that the SPS was wrong to conclude that Mr X's request of 16 April 2013 was vexatious.
29. Having read all of Mr X's correspondence, the Commissioner is also satisfied that he now accepts that the SPS has not carried out the review referred to in his request (and therefore that it did (and does) not hold the information he requested). In the circumstances, the Commissioner does not require the SPS to take any action in response to this decision.

Technical Issues

30. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case. The SPS failed to respond to Mr X's request within 20 working days, a failure which it has acknowledged. Therefore, the Commissioner finds that the SPS failed to comply with section 10(1) of FOISA.
31. Section 21(10) of FOISA requires that where a Scottish public authority is responding to a requirement for review, the notice it gives the requester must contain particulars of their rights of application to the Commissioner and appeal to the Court of Session.
32. The SPS's response to Mr X's requirement for review did not contain details of these rights. Again, the SPS has acknowledged this. The Commissioner therefore finds that the SPS failed to respond to Mr X's requirement for review in accordance with section 21(10) of FOISA.
33. Bearing in mind that the SPS responded to Mr X's requirement for review, and that he appears to have experienced no detriment in the exercise of his rights under FOISA as a result of either breach, the Commissioner does not require the SPS to take any action in response.



DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr X. In particular, she finds that the SPS was not entitled to refuse to comply with the request on the basis that it was vexatious, in terms of section 14(1) of FOISA. Given that Mr X now accepts that the SPS does not hold the information, she does not require the SPS any action in respect of this failure, in response to Mr X's application.

The Commissioner also finds that the SPS failed to comply with sections 10(1) and 21(10) of FOISA in dealing with Mr X's initial request and his requirement for review. She does not require the SPS to take any action in respect of these failures, in response to Mr X's application.

Appeal

Should either Mr X 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. Any such appeal must be made within 42 days after the date of intimation of this decision.

Rosemary Agnew
Scottish Information Commissioner
12 May 2014



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

...

- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1)