

# Decision Notice

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## Decision 154/2017: Mr Q and the Scottish Prison Service

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### Parole handbook: failure to respond within statutory timescales

Reference No: 201701243

Decision Date: 14 September 2017



Scottish Information  
Commissioner

## Summary

On 14 April 2017, the Scottish Prison Service (the SPS) was asked for information regarding the Parole Handbook, including amendments and annexes. This decision finds that the SPS failed to respond to part of the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the SPS to comply with the requirement for review.

## Background

Date	Action
14 April 2017	Mr Q made an information request to the SPS.
15 May 2017	The SPS responded to the request.
18 May 2017	Mr Q wrote to the SPS, pointing out that he had not received some of the information which should have been enclosed with the response to his request.
25 May 2017	Mr Q wrote to the SPS requiring a review of its decision.
	Mr Q did not receive a response to his requirement for review.
10 July 2017	Mr Q wrote to the Commissioner's Office, stating that he was dissatisfied with the SPS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
30 August 2017	The SPS was notified in writing that an application had been received from Mr Q and was invited to comment on the application.
5 September 2017	The Commissioner received submissions from the SPS. These submissions are considered below.

## Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. The SPS submitted that Mr Q had made a request for review on 18 May 2017 prior to making a second request for review on 25 May 2017. The SPS submitted that the reasons given for the review request were the same in both letters. The SPS had contacted HMP Edinburgh who confirmed that they were dealing the review request of 18 May 2017.
3. The SPS argued that the request for review was handled appropriately and complied with the requirements of FOISA. It submitted that a response to Mr Q's request for review of 18 May 2017 was provided on 15 June 2017 and signed for by him on 16 June 2017. It argued that the second request for review (dated 25 May 2017) was invalid, as its response of 15 June 2017 complied with the requirements of FOISA.

4. The SPS provided the Commissioner with a copy of its review outcome dated 15 June 2017, as well as the mail inventory sheet dated 16 June 2017, which Mr Q signed.
5. The Commissioner has considered the review requests that Mr Q submitted on 18 May 2017 and 25 May 2017. The letter of 25 May 2017 clearly indicates that it was intended to be a formal request for review, whereas the letter of 18 May 2017 is simply a list of information which Mr Q believed was missing from the response to his information request.
6. The Commissioner notes that in the letter of 18 May 2017, Mr Q refers to his dissatisfaction with the SPS's response to parts 1, 2, 4 and 5 of his request. In his letter dated 25 May 2017, Mr Q asked the SPS to review its response to parts 1, 2, 3, 4 and 5 of his request.
7. The Commissioner is satisfied that, even if the letter of 18 May 2017 was a request for review in terms of section 20(1) of FOISA, the review request dated 25 May 2017 was not identical and expressed dissatisfaction with the response to part 3 of Mr Q's information request (not raised in the letter of 18 May 2017).
8. The Commissioner notes that the SPS's review outcome of 15 June 2017 only reviewed its responses to parts 1, 2, 4 and 5 of Mr Q's request for review. It did not take into account the additional requirement for review set out in Mr Q's letter of 25 May 2017.
9. Given that Mr Q had clearly indicated that he intended his letter of 25 May 2017 to be a formal request for review, and given that he raised at least one matter not covered by his letter of 18 May 2017, the Commissioner finds that it was not reasonable to disregard his letter of 25 May 2017 on the grounds that the SPS had already responded to a request for review of its response to Mr Q's information request.
10. As the SPS did not provide a response to Mr Q's requirement for review of part 3 of his request for information within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
11. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review of part 3 of Mr Q's request has been carried out in this case, the Commissioner finds that the SPS failed to discharge these requirements: she now requires the SPS to carry out a review of its response to part 3 of Mr Q's request in accordance with section 21.

## Decision

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The Commissioner finds that the Scottish Prison Service (the SPS) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Q. In particular, the SPS failed to conduct a review of part 3 of Mr Q's information request within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the SPS to provide Mr Q with a review of its response to part 3 of his information request, by 30 October 2017.

## Appeal

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Should either Mr Q 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.

## **Enforcement**

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If the Scottish Prison Service (the SPS) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SPS has failed to comply. The Court has the right to inquire into the matter and may deal with the SPS as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**14 September 2017**

**Scottish Information Commissioner**

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