

Decision Notice 200/2021

Use of the RapiScan machine at HMP Edinburgh

Applicant: The Applicant

Public authority: Scottish Prison Service

Case Ref: 202100473



Scottish Information
Commissioner

Summary

The SPS was asked about the use of the RapiScan machine at HMP Edinburgh. The SPS disclosed some information, but withheld other information under a number of exemptions.

During the investigation, the SPS disclosed this information to the Applicant. The Applicant was satisfied with this disclosure.

The Commissioner found that the SPS had failed to comply fully with FOISA in responding to the request. He found that, in the absence of submissions to the contrary, that the SPS was not entitled to claim that certain information was exempt at the time it handled the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 21 December 2020, the Applicant requested from the Scottish Prison Service (the SPS) information about the use of the RapiScan machine at HMP Edinburgh. The Applicant asked for:
 - (i) Date of purchase and cost
 - (ii) Date of first use in this establishment
 - (iii) Number of tests (totals) taken to date
 - (iv) Numbers (totals) of positive, negative or error results, broken down by establishment halls, years, months and substances
 - (v) Number of items seized, broken down as above including place of origin (via post, from cell/hall, from search of person, admission, etc.)
 - (vi) Number of disputed results, referrals to Police Scotland and Scottish Public Services Ombudsman involvement, broken down as above
 - (vii) Number of staff trained in use
 - (viii) Details of servicing and calibration schedule, including who by
 - (ix) Policy/procedure/SOP (standard operating procedure) for use and operation of the machine
 - (x) Policy/procedure/SOP for seizure of items and decision of referral to Police Scotland and disposal of same post positive result
2. The SPS responded on 31 December 2020 and refused to disclose any of the information the Applicant had requested on the basis that disclosure would, or would be likely to, prejudice substantially the maintenance of security and good order in prisons (section 35(1)(f) of FOISA).

3. On 5 January 2021, the Applicant wrote to the SPS requesting a review of its decision on the basis that he did not accept that his request should be refused in its entirety.
4. The SPS notified the Applicant of the outcome of its review on 2 April 2021. The SPS modified its response. The SPS:
 - part (i): advised the Applicant that the information was not exempt from disclosure under section 35(1)(f) of FOISA, but was exempt under section 33(1)(b) of FOISA on the basis that disclosure would, or would be likely to, prejudice substantially a third party's commercial interests
 - parts (ii), (iii), (v), (vi), (vi)i and (viii): disclosed information
 - part (iv): provided the number of positive test results, but notified the Applicant that it did not hold the remainder of the information requested was not held
 - maintained that section 35(1)(f) applied to part (ix) and to the SOP requested in part (x).
5. On 14 April 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the SPS's review because the SPS had not disclosed information he believed he was entitled to receive. The Applicant provided detailed reasons why he was dissatisfied with all responses except for those to parts (ii) and (vii) and why he believed that the SPS should have provided him with the information requested.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
7. On 26 April 2021, the SPS was notified in writing that the Applicant had made a valid application. The SPS was asked to send the Commissioner the information withheld from the Applicant. The SPS provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this application and to answer specific questions. These related to the information that was withheld from the Applicant.
9. The SPS provided its comments to the Commissioner. It also wrote again to the Applicant (on 28 September 2021) and supplied him with information, and explanations.
10. The Applicant wrote to the Commissioner on 28 October 2021 (received 9 November 2021). He confirmed that he had received the information and a revised response from the SPS for parts (i), (iii), (iv), (v), (vi), (viii), (ix) and (x) He stated that he was content that the SPS "had rectified the matter", but that he wished the Commissioner to issue a decision that reflected this.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the SPS. He is satisfied that no matter of relevance has been overlooked.
12. In this application, the Applicant was dissatisfied that he had not been provided with information. During the Commissioner's investigation, the SPS responded again to the Applicant and provided him with information. The SPS also provided the Commissioner with a copy of the information given to the Applicant and explained how it had ascertained the information it held and had now provided.
13. Having received this revised response from the SPS, the Applicant wrote to the Commissioner. He stated in his letter of 28 October 2021 to the Commissioner that he was content "... that the SPS, following the Commissioner's involvement, have overturned and rectified their decision/refusal." He asked that a decision be issued to that effect.
14. In the absence of any submissions to the contrary, the Commissioner finds that the SPS should have supplied the information at the time of request handling that it later disclosed to the Applicant during the Commissioner's investigation. The Commissioner therefore finds that the SPS failed to comply fully with Part 1 of FOISA in responding to the Applicant's request.
15. Given that the Applicant is now satisfied with the response from the SPS, the Commissioner makes no decision on the small amount of information the SPS redacted from information disclose to the Applicant.

Decision

The Commissioner finds that the Scottish Prison Service (SPS) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In failing to provide information at the time it handled the request, the SPS failed to comply with section 1(1) of FOISA.

Given that the SPS supplied the information to the Applicant during the investigation, the Commissioner does not require the SPS to take any action in response to this failure in response to the Applicant's application.

Appeal

Should either the Applicant 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.

Margaret Keyse
Head of Enforcement

14 December 2021

Appendix 1: 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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info