



Decision Notice 009/2024

Psychological risk assessments– failure to respond

Applicant:

Authority: Scottish Prison Service

Case Ref: 202301521

Summary

The Applicant asked the Authority for information about psychological risk assessments. This decision finds that the Authority failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

Background

1. The Applicant made an information request to the Authority on 31 August 2023.
2. The Authority did not respond to the information request.
3. On 6 October 2023, the Applicant wrote to the Authority in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 30 November 2023, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 1 December 2023.
8. The Commissioner received submissions from the Authority on 14 December 2023. These submissions are considered below.
9. The Authority accepted that it had failed to respond to the Applicant's information request and requirement for review within the timescales allowed by FOISA.
10. In relation to its failure to respond to the request, the Authority explained that there was a breakdown in communication between its' headquarters and the relevant prison: each party considered that the other party would respond to the request, but it did not.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. In relation to the subsequent failure to respond to the review request, the Authority explained that the person to whom the Applicant's requirement for review had been addressed no longer worked for the Authority. As a consequence, it had been unable to establish why the requirement for review had not been actioned and dealt with. The Authority also commented that other personnel who may have been tasked with actioning the request were unaware of it.
14. 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. Again, this is subject to qualifications which are not relevant in this case.
15. It is also a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
16. 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 has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
17. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.
18. The Commissioner would remind Scottish public authorities that the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code) expects them to be adequately resourced to support and deliver their FOI duties (paragraph 1.1.4 in Part 2) and, specifically, to have in place robust arrangements to ensure that staff absences (planned or unplanned) do not affect their ability to respond to information requests and requests for review (paragraph 1.4.1 in Part 2).

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. The Commissioner requires the Authority to respond to the Applicant's requirement for review by Thursday, 29 February 2024.

Appeal

Should either the Applicant or the Authority 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

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

Jill Walker
Deputy Head of Enforcement

15 January 2024