



Scottish Information
Commissioner

**Decision 118/2007 Mr F and the Scottish Prison
Service**

Request for information regarding prisoners' mail and other matters

Applicant: Mr F
Authority: Scottish Prison Service
Case No: 200601080
Decision Date: 23 July 2007

Kevin Dunion
Scottish Information Commissioner

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Decision 118/2007 Mr F and the Scottish Prison Service

Request for information regarding prisoners' mail and other matters – some information was released by the Scottish Prison Service – during the investigation further information was released to Mr F. The Commissioner found that the Scottish Prison Service had released all the information it held but had failed to respond to Mr F's initial request within the statutory timescales.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002: sections 1(1) (General entitlement) and 10(1) (Time for compliance)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr F requested information regarding prisoners' mail and other matters held by the Scottish Prison Service (SPS). The SPS failed to respond, so Mr F requested a review of its lack of response to his initial request. The SPS withheld answers to two questions under 33(1)(b) and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA) and released other information it held regarding Mr F's questions. Mr F remained dissatisfied and applied to the Commissioner for a decision in relation to the SPS withholding information regarding his request.

During the investigation, further information was released to Mr F. Mr F agreed that the SPS had released all of the information it held regarding his initial request. The Commissioner considered that the SPS had failed to comply with FOISA in responding to Mr F's initial request within the statutory timescales but did not require the SPS to take any further action.



Background

1. On 15 February 2006, Mr F wrote to the SPS requesting the following information:
 - Question 1. What is the value of the contractual relationship between the SPS and Trinity Mirror publications (to include advertising, joint sponsorship, &c) in the period 1 January — 31 December 2005?
 - Question 2. How many recorded incidents throughout the SPS estate in the period 1 May 2004 - 15 March 2005 involved SPS staff opening correspondence addressed to a prisoner bearing to be privileged correspondence in circumstances where there was said to be a suspicion that the mail item in question contained prohibited material?
 - Question 3. For each incident coming within the scope of (2), please provide a break-down to include (a) the name of the establishment, (b) whether the item bore to be legal correspondence or some other species of privileged correspondence, (c) the class and quantity of any drugs discovered therein, (d) the date of the incident, (e) any disposal arising from the incident (e.g. report to police, report to Procurator Fiscal, prosecution, conviction, &c);
 - Question 4. How many recorded incidents throughout the SPS estate in the period 16 March 2005 – 31 January 2006 involved SPS staff opening correspondence addressed to a prisoner bearing to be privileged correspondence in circumstances where there was said to be a suspicion that the mail item in question contained prohibited material?
 - Question 5. For each incident coming within the scope of (4) please provide an break-down to include (a) the name of the establishment, (b) whether the item bore to be legal correspondence or some other species of privileged correspondence, (c) the class and quantity of any drugs discovered therein, (d) the date of the incident, (a) any disposal arising from the incident (e.g. report to police, report to Procurator Fiscal, prosecution, conviction, &c);
 - Question 6. Please identify any SPS spokesperson who contributed to the 'Daily Record' article on 13th inst:



- Question 7. Please provide a copy of any statement, press release, or other written material contributed by the SPS in connection with the 'Daily Record' article of 13th inst:
- Question 8. How many SPS/Premier/Reliance personnel have been subject to formal investigation (including suspension, prosecution, &c) on suspicion of drug or alcohol trafficking or misuse during the period 1 May 2004 to 31 January 2006?
2. On 27 March 2006, Mr F wrote again to the SPS requesting a review of its lack of response and a timeous response to the questions in raised in his letter of 15 February 2007.
3. On 12 April 2006, the SPS responded to Mr F's questions as follows:
- Question 1 – the SPS relied on section 33(1)(b) of FOISA to withhold the information.
- Questions 2 to 5 – could not provide a detailed response to the questions but released a summary of the number of occasions where prohibited items had been found in mail claiming to be privileged correspondence.
- Questions 6 and 7 – a response was provided.
- Question 8 - the SPS relied on section 38(1)(b) of FOISA to withhold the information.
4. On 15 June 2006, Mr F wrote to my Office, stating that he was dissatisfied with the outcome of the SPS review in that it would not release information to him and applying to me for a decision in terms of section 47(1) of FOISA.

The Investigation

5. On 28 June 2006, Mr F wrote to my Office stating that he would also like the decision to consider the failure of the SPS to respond his original request dated 15 February 2006 within the statutory timescales.
6. Time was spent between July 2006 and January 2007 obtaining copies of Mr F's initial request, request for review and the response from the SPS.
7. The application was validated on 13 December 2006 by establishing that Mr F had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



8. The SPS is an agency of the Scottish Executive (“the Executive”) and, in line with agreed procedures, the Executive was contacted on 13 December 2006 in terms of section 49(3)(a) of FOISA asking for its comments on the application and a copy of the information which had been withheld from Mr F.
9. On 26 January 2007, the Executive responded as follows:

Question 1 – the Executive withdrew its reliance on section 33(1)(b) of FOISA to withhold the information and released the total cost of advertising in Trinity Mirror publications during the period of 1 January – 31 December 2005.

Questions 2 to 5 – the Executive provided a copy of the summary list released to Mr F. This list detailed the number of occasions per establishment when mail claiming to be privileged correspondence had been opened.

Questions 6 and 7 – a response was provided.

Question 8 - the SPS relied on section 38(1)(b) of FOISA to withhold the information.
10. On 31 January 2007, the SPS wrote directly to Mr F, a copy of which was supplied to my Office. The SPS provided the following additional information:

Question 1 – the SPS stated that there was no contractual relationship with the Trinity Mirror publications. However, it provided details of the value of advertising for recruitment purposes through Trinity Mirror publications.

Questions 2 to 5 – the SPS informed Mr F that another named organisation held the information he was seeking.

Question 8 - the SPS stated that it could not provide details about Premier and Reliance staff. However, the investigation into its own staff had now concluded and confirmed the number of staff that were subject to a formal investigation.
11. On 16 February 2007, the investigating officer wrote to Mr F to clarify which of his eight questions he considered were still unanswered. Mr F responded on 28 February 2007 stating that although the SPS had released information regarding question 1, he requested that the Commissioner come to a decision as to whether the SPS was correct to withhold the information in the first instance. Mr F was also dissatisfied with the response to question 8 as he was aware of another prison officer who had been investigated by the SPS but was not dismissed.



12. On 8 March 2007 the investigating officer emailed the Executive to ask it to provide copies of the SPS procedures regarding the opening of prisoners' mail and how the figures released to Mr F were calculated. The investigating officer also enquired from the Executive about the contractual relationship between the SPS, Premier and Reliance.
13. On 22 March 2007, the Executive provided the information requested by the investigating officer. Having read the information, this engendered additional questions being raised by the investigating officer in an email to the Executive on 27 March 2007.
14. After further correspondence between the investigating officer and the Executive, the SPS issued a letter to Mr F on 7 May 2007 releasing further information regarding questions 2 to 5 and a revised statement regarding question 8.
15. On 9 May 2007, the investigating officer wrote to Mr F asking him to comment on whether he considered that the SPS had released all of the information it held regarding his original request. Mr F responded on 25 May 2007 stating that a response to question 8 was still outstanding, but that the SPS had answered all his other questions.
16. On 30 May 2007, the investigating officer emailed the Executive asking it to clarify the response to this question. The Executive wrote to the investigating officer on 1 June 2007, providing additional information regarding the response to question 8. This information was passed onto Mr F.
17. On 12 June 2007 Mr F wrote to the investigating officer and commented that although question 8 had now been answered, he considered that the SPS could have provided this information in response to his original request.

The Commissioner's Analysis and Findings

18. In coming to a decision on this matter, I have borne in mind the confirmation from Mr F that he does consider that the SPS has released all the information it holds regarding his original request. However, Mr F was dissatisfied with the SPS response to questions 1 and 8.



Question 1

19. In his application to my office, Mr F expressed dissatisfaction with the SPS' decision to withhold the information regarding question 1 – 'value of the spend with Trinity Mirror publications. The SPS did release this information at a later stage. However, Mr F requested that I come to a decision as to whether the SPS was correct to withhold this information in the first place.
20. In its letter to Mr F on 31 January 2007, the SPS stated that there was no contractual relationship with the Trinity Mirror publications. However, it provided the value of advertising for recruitment purposes to Mr F.
21. In his request for information Mr F requested the value of the contractual relationship between the two parties. Since no contractual relationship existed between the two parties, the SPS could have considered issuing a section 17 of FOISA notice to Mr F stating that it did not hold the information being requested. If a contractual relationship did exist between the parties then I would have considered whether the exemption applied (section 33(1)(b) of FOISA) – Commercial interests and the economy. However, since no contractual relationship existed I will not consider this exemption under section 33(1)(b) of FOISA further.
22. It should be noted that my remit as the Scottish Information Commissioner extends to the consideration of whether a public authority has provided the requested information to an applicant and the manner in which that request was handled. At any time prior to a decision being issued, a Scottish public authority can release the requested information to an applicant. Since the information was subsequently released to Mr F I will not comment any further on this matter and I do not require the SPS to take any further action. However, I will re-iterate that a public authority should consider each request for information in detail and apply the appropriate exemptions under FOISA if it intends to withhold information.

Question 8

23. When the SPS responded to Mr F's request, it withheld the information in response to this question under section 38(1)(b) of FOISA. However, as stated above, the SPS did release information associated with this question on 31 January 2007.
24. In correspondence with the investigating officer on 25 May 2007, Mr F stated he was aware of an SPS officer who had been subject to a formal investigation and wanted clarification as to whether this officer had been included in the number released by the SPS in response to question 8.



25. The investigating officer obtained confirmation from the Executive that this particular SPS officer had not been included in the number released by the SPS to Mr F. This information was conveyed to Mr F.
26. Mr F was dissatisfied with this response, especially as the SPS had initially withheld the information under section 38(1)(b) of FOISA.
27. In its response of 1 June 2007, the Executive provided an explanation as to why this particular SPS officer was not included in the numbers released to Mr F in response to question 8. I agree with the Executive's/SPS reasoning for excluding this particular SPS officer from the numbers released to Mr F and therefore conclude that the Mr F has now been supplied with the full information in response to his request. I do not require any further action to be taken on this point.

Technical breach of FOISA

28. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of a request to comply with that request.
29. In this instance the SPS did not respond to Mr F's request. This led to him submitting a request for review to the SPS on 27 March 2006.
30. Since the SPS did respond to Mr F's request for review, I do not require the SPS to take any further action in this matter.

Decision

I find that Scottish Prison Service (SPS) failed to comply with Part 1 of FOISA in failing to respond to Mr F's request within the 20 working day period set out in section 10(1) of FOISA. I do not require any remedial action to be taken by the SPS in respect of this breach.



Appeal

Should either Mr F or the SPS wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
23 July 2007



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.

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
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.