

# Decision Notice



Decision 024/2011 Mr H and the Scottish Prison Service

National policies on prisoners' access to IT equipment, etc

Reference No: 201002319

Decision Date: 4 February 2011

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr H requested certain national policies from the Scottish Prison Service (SPS). The SPS responded by providing some of the requested information, while stating that it did not hold the remainder. Following a review, Mr H remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had partially failed to deal with Mr H's request for information in accordance with Part 1 of FOISA, by failing to supply certain information that fell within the terms of the requests. As the SPS supplied that remaining information to Mr H in the course of the investigation, the Commissioner did not require the SPS to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15 (Duty to provide advice and assistance) and 17(1) (Notice that information is not held)

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

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1. On 22 October 2010, Mr H wrote to the SPS requesting the following information:
  - Existing national policy on prisoners' access to IT equipment within Education and the Link Centre [request 1];
  - Existing national policy/guidelines on prisoners' access to personal IT equipment [request 2];
  - Existing national criteria for access to computer facilities for legal purposes [request 3];
  - Existing national policy/guidelines on prisoners' access to personal typewriters [request 4]; and
  - Existing national policy/guidelines on prisoners' access to physical activities [request 5].



2. The SPS responded on 8 November 2010, providing information and explanations for requests 1 and 5. The SPS informed Mr H that there were no national policies/guidelines in relation to the matters covered by requests 2, 3 and 4, but provided Mr H with a communication regarding prohibited personal communication devices (which related to requests 2 and 3).
3. On 12 November 2010, Mr H wrote to the SPS requesting a review of its decision. In particular, he did not accept that the SPS held no information covered by requests 2, 3 and 4 and questioned whether the SPS's responses to these requests were fully compliant with section 17 of FOISA. Mr H also believed that further information could be supplied by the SPS for requests 1 and 5.
4. The SPS notified Mr H of the outcome of its review on 10 December 2010. The SPS upheld its decision that no information was held in relation to requests 2, 3 and 4 and accepted that its initial response should have made it clear that it was (in relation to these requests) a refusal notice in terms of section 17 of FOISA. The SPS also confirmed that all the information had been supplied for requests 1 and 5, but added that if Mr H could provide additional information about what else he was looking for then request 5 could be investigated further on his behalf.
5. On 14 December 2010 Mr H 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.
6. The application was validated by establishing that Mr H had made a request for information to a Scottish public authority and had 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

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7. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing (on 23 December 2010) that an application had been received from Mr H and that an investigation into the matter had commenced.
8. The Ministers were also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions (with particular reference to the steps taken to establish what information was held). Subsequent references to submissions from the SPS are references to submissions made by the Ministers' Freedom of Information Unit on behalf of the SPS.
9. In his application to the Commissioner, Mr H made reference to documents which he believed fell within the scope of his requests and should have been provided to him by the SPS in response to those requests. The SPS was asked to consider whether these documents fell within the scope of the requests.



10. The SPS responded on 28 January 2011 with its submissions, including details of its searches. The SPS also provided Mr H with additional information around the same time.
11. Mr H's application to the Commissioner included allegations about SPS staff. The Commissioner has considered these points but concluded that the matters raised are outwith his remit under FOISA.
12. The relevant submissions obtained from Mr H and the SPS will be considered fully in the Commissioner's analysis and findings below.

### **Commissioner's analysis and findings**

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13. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr H and the SPS and is satisfied that no matter of relevance has been overlooked.

#### **Information held by the SPS**

14. Section 17(1) of FOISA states that where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information. In terms of section 1(4), the information an authority is required to provide in response to a request is generally that held by it at the time the request is received.
15. In its submission, the SPS confirmed that some of the documents identified by Mr H in his application to the Commissioner could be considered within the scope of the requests. While regretting that these documents were not identified by it initially, it explained that they were more than 10 years old and therefore were not stored on the same resource as the documentation it considered most relevant. The SPS explained that this information had since been sent to Mr H.
16. The SPS further commented that, had Mr H identified these documents when submitting his request or request for review, then this would have ensured that he received the specific information sooner. In respect of request 2 in particular, the SPS highlighted its concern that Mr H already knew details of the circulars he identified to the Commissioner, but failed to identify those when submitting his request or request for review. In the circumstances, the SPS believed Mr H's appeal to have been motivated by purposes other than the legitimate obtaining of information. It did not, however, choose to argue that Mr H's requests were either invalid or vexatious, and in this case (having considered the terms of the requests and the submissions he has received) the Commissioner does not find that he has any locus to comment on either the degree of precision used by the applicant or his motivation (perceived or actual).



17. Having considered the submissions received from the SPS, along with its overall handling of the request, the Commissioner is satisfied that any information held by the SPS and falling within the scope of Mr H's request has now been provided to him. However, given that certain of this information was located and provided only after Mr H had applied to the Commissioner for a decision, the Commissioner finds that by failing to provide all of the relevant information in response to his initial request or on review, the SPS failed to comply fully with Part 1 of FOISA (and in particular with section 1(1)) in responding to Mr H's requests of 22 October 2010. He also notes that while the information provided in the course of the investigation may not have been information the SPS considered most relevant, it clearly remained current at the time the request was dealt with and therefore should have been readily accessible.
18. Having found a breach of Part 1 of FOISA, the Commissioner must consider whether any steps are now required from the SPS to rectify that breach. In the circumstances, taking account of the provision of information in the course of the investigation and the Commissioner's impending assessment of the SPS's practice in relation to Freedom of Information, the Commissioner does not require any such steps to be taken in this case.

#### **Section 15 – duty to provide advice and assistance**

19. Mr H expressed dissatisfaction that the SPS had failed to provide him with advice and assistance, in terms of section 15 of FOISA, in respect of request 1.
20. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person proposes to make, or has made, a request for information to it. Examples of such advice and assistance given in the Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA (commonly known as the "Section 60 Code") include providing a general response to the request setting out options for further information which could be provided on request.
21. The SPS explained that the issues raised by Mr H in his FOI request had been previously discussed and answered by the SPS in extensive correspondence with him. The SPS therefore considered that submitted that it had provided Mr H with "more than adequate advice and assistance and information on multiple occasions". However, the Commissioner is considering here whether the SPS complied with section 15 of FOISA in dealing with Mr H's request 1 of 22 October 2010.
22. In respect of request 1, the SPS explained that information initially provided to Mr H was given in an attempt to comply with the duties under section 15. The SPS submitted that, as the specific documentation requested by Mr H was not held, it was considered appropriate to provide him with the information it did hold which most closely related to his request.



23. Having considered the submissions he has received and the information provided to Mr H, the Commissioner does not find that it would be reasonable in the circumstances to identify any failure on the SPS's part in providing Mr H with appropriate advice to enable him to pursue his rights under FOISA. There is nothing in Mr H's first request which suggests that it required the provision of advice and assistance in response, and the Commissioner is satisfied that such advice and assistance as the SPS did provide was appropriate in the context of the information it held. That the SPS did not provide Mr H with all of the information falling within the terms of his requests was a breach of section 1(1) of FOISA (as discussed above), but it does not follow in the present circumstances that there was a consequent breach of section 15.

## DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr H. In particular, the Commissioner finds that the SPS failed to identify, locate and provide Mr H with all of the information that fell within the terms of Mr H's requests, as required by section 1(1) of FOISA.

Given that the SPS has now provided Mr H with all of the information that falls within the terms of his requests, the Commissioner does not require the SPS to take any action in respect of this failure in response to Mr H's application.



## Appeal

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Should either Mr H or the Scottish Prison Service 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 after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**4 February 2011**



## Appendix

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### 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.
- ...

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),





if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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