

Decision Notice



Decision 119/2011 Mr A and the Scottish Prison Service

Assaults and segregation in HMP Dumfries

Reference No: 201100065
Decision Date: 14 June 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr A asked the Scottish Prison Service (the SPS) for a range of information relating to the numbers of assaults, disciplinary charges and prisoners held in segregation and visited by a medical officer in HMP Dumfries since 1 January 2001.

The SPS responded by providing some information to Mr A, but it notified him (in terms of section 17(1) of the Freedom of Information (Scotland) Act 2002 (FOISA)) that it did not hold information which would address some parts of his request. Following a review, Mr A remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the SPS reconsidered its approach to Mr A's request, and it accepted that it did hold the requested information. Further information, relating to assaults by staff, was disclosed to Mr A in compliance with some parts of his request. However, the SPS indicated that the cost of complying with other parts would exceed £600, and so it was entitled to refuse these parts of the request under section 12(1) of FOISA.

Following the investigation, the Commissioner found that the SPS had failed to deal with Mr A's request for information in accordance with Part 1 of FOISA. The Commissioner found that the SPS was wrong to notify Mr A in terms of section 17 that it did not hold the information he had requested. By failing to supply information relating to assaults by SPS staff, the Commissioner found that the SPS failed to comply with section 1(1) of FOISA. However, the Commissioner was satisfied that this breach was rectified during the investigation.

The Commissioner accepted that the cost of complying with the remaining parts of Mr A's request would exceed the £600 prescribed limit, and so the SPS was entitled to refuse to respond to these parts of Mr A's request under section 12(1) of FOISA. With respect to these parts, the Commissioner therefore concluded that the SPS had not breached section 1(1) of FOISA.

The Commissioner also found that the SPS breached section 21(1) of FOISA in not responding to Mr A's request for review within 20 working days.

As the Commissioner is satisfied that Mr A has now received all information that he was entitled to receive in response to his request, he does not require the SPS to take any action in relation to the breaches identified in this decision.



Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 17(1) (Notice that information is not held) and 21(1) (Review by Scottish public authority)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 2 (Interpretation); 3 (Projected costs) and 5 (Excessive cost –prescribed amount)

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

1. On 4 November 2010, Mr A wrote to the SPS to request the following information:
 - (1) The total number of;
 - a. minor prisoner on staff assaults,
 - b. minor prisoner on prisoner assaults,
 - c. minor staff on prisoner assaults,
 - d. minor staff on staff assaults,
 - e. serious prisoner on staff assaults,
 - f. serious prisoner on prisoner assaults,
 - g. serious staff on prisoner assaults and
 - h. serious staff on staff assaultsthat have taken place in HMP Dumfries since 1 January 2001.
 - (2) The total number of discipline charges that have been brought against prisoners in HMP Dumfries since 1 January 2001, and of these how many were found guilty.
 - (3) The total number of prisoners that have been held in segregation in HMP Dumfries since 1 January 2001, and also how many were visited by a medical officer.



2. The SPS responded on 30 November 2010. Responding to part (1), the SPS explained in relation to parts (a), (b), (e) and (f) (those seeking numbers of minor and serious assaults by prisoners on staff or other prisoners) that information was only recorded by the number of assaults that take place and not differentiated between minor and serious assaults. As a consequence, the SPS notified Mr A (in terms of section 17 of FOISA) that it did not hold this information. It did, however, provide Mr A with the total numbers of prisoner on staff and prisoner on prisoner assaults between 1 January 2001 and 5 November 2010.
3. In its response to parts (c), (d), (g) and (h) of part (1) of Mr A's request (those seeking numbers of minor and serious assaults by staff on prisoners or other staff), the SPS notified Mr A that this information was not recorded and so it held no information which would address these parts of his request.
4. In response to part (2) of Mr A's request, the SPS explained that it did not hold information regarding the number of disciplinary charges since 2001, as the information had been routinely destroyed in line with the SPS's records management practice prior to his request being received. However, it did advise Mr A that it held records from 15 April 2004 and confirmed the number of governor's reports since that date, and the number of cases in which the prisoners were found guilty.
5. In response to part (3) (which sought the number of prisoners held in segregation and visited by a medical officer since 2001), the SPS notified Mr A that it did not hold information dating back to January 2001, but it provided the number of prisoners held in segregation since July 2004. The SPS advised Mr A that it does not keep a record of the number of these prisoners who were visited by a medical officer, and so indicated that no information was held regarding that part of his request.
6. On 3 December 2010, Mr A wrote to the SPS requesting a review of its decision in relation to parts (1) and (3) of his request. He expressed no dissatisfaction with the SPS's response to part (2) of his request.
7. With respect to part (1), Mr A drew the SPS' attention to a report prepared by HM Inspectorate of Prisons in 2008, regarding HMP Dumfries, and noted that this report contained statistics relating to assaults in the prison and that these were classified as minor or serious. Mr A also commented that he was aware that these statistics had been provided by the SPS and so he did not accept its response regarding parts (a), (b), (e) and (f) of part (1) of his request, that it did not hold figures which differentiate between the seriousness of the assault. Mr A also indicated that he did not accept the SPS' contention that it did not hold any information regarding assaults by staff which would fulfil parts (c), (d), (g) and (h) of part (1) of his request. He suggested that such information could be drawn from the personnel records of the staff concerned.
8. In relation to part (3) of his request, Mr A advised the SPS that he did not believe that it does not hold information as to how many prisoners in segregation had been visited by a medical officer, when it was a mandatory requirement for such visits to be undertaken. Mr A also commented that the SPS had not fully explained why it did not hold statistics for the number of prisoners held in segregation dating back to January 2001.



9. The SPS notified Mr A of the outcome of its review on 7 January 2011. In response to Mr A's comments about the categorisation of assaults by prisoners, the SPS explained that violence has only been categorised as "Serious", "Minor" and "Non-Injury" since 1 April 2009; prior to that, only serious assaults were recorded. The SPS explained that the previously used report had covered fights as well as assaults and so did not meet Mr A's request.
10. The SPS offered to provide Mr A with figures relating only to assaults from 1 April 2009 which would address parts (a), (b), (e) and (f) of part (1) of his request. It noted that figures for one full year (2009-10) could be provided, or information for two years could be provided if Mr A wished to wait until after 1 April 2011.
11. The SPS acknowledged that it would have been appropriate to clarify whether the limited information available would meet Mr A's needs, but it maintained that it had been correct to say that it did not hold information covering the period from 2001. The SPS also explained that it was unsure where the statistics in the report produced by HM Inspectorate of Prisons had come from, and invited Mr A to contact the authors of the report for the information.
12. In respect of information covering parts (c), (d), (g) and (h) of part (1) of Mr A's request (concerning the number of assaults by staff), the SPS upheld its previous decision that it did not hold information which would address these parts of his request.
13. The SPS also upheld its previous response in relation to part (3) of Mr A's request, and maintained that no further information was held beyond the time-limited information supplied.
14. On 19 January 2011, Mr A 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. Mr A advised that he was dissatisfied with the response from the SPS to parts (1) and (3) of his request. Mr A also commented that the SPS had not responded to his requirement for review within the statutory 20 working day timescale.
15. The application was validated by establishing that Mr A 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.

Investigation

16. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing (on 26 January 2011) that an application had been received from Mr A and that an investigation into the matter had commenced. 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.



17. Subsequent references to submissions requested and received from the SPS in this decision are references to those sought and received from the Ministers' Freedom of Information Unit on behalf of the SPS.
18. The SPS was asked to comment on Mr A's contention that it had not responded to his request for review within 20 working days. The SPS was also asked to explain the nature of the searches that it carried out to determine the extent to which information was held which would address parts (1) and (3) of Mr A's request.
19. The SPS was asked to comment on Mr A's concern that its response to part (1) of his request (which indicated that no distinction was drawn between minor and serious assaults until 2009) was implausible, given that there is a report about HMP Dumfries which recorded statistics from 2008 (stated to have been provided by HMP Dumfries) which distinguish between minor and serious assaults.
20. The SPS was also asked to comment on Mr A's contention that its response to part (3) of his request was not plausible or lawful as SPS Guidance on Orderly Room Procedures requires a medical officer to visit those held in cellular confinement, and therefore (Mr Smith contended) to record such visits.
21. On 7 February 2011, Mr A provided the Commissioner with a response that he had received to an information request similar to that under consideration, which he had submitted to HMP Peterhead and which separately addressed the parts of his requests seeking details of serious or minor assaults by prisoners on other prisoners or staff. In relation to assaults by staff, the SPS confirmed that there had been one assault against a prisoner, although records did not distinguish between minor and serious assaults by staff. The SPS also confirmed the number of prisoners held in segregation within HMP Peterhead since 1 January 2001, and indicated that it would confirm how many were visited by a medical officer in a further communication.
22. Mr A asked that it be investigated why HMP Peterhead could provide this information but HMP Dumfries could not
23. The investigating officer contacted the SPS on 10 February 2011 and asked it to provide further submissions as to why it appeared that staff within HMP Dumfries do not record the number of prisoners who have been held in segregation and who have been visited by a medical officer, but staff within HMP Peterhead do.
24. A full response to the investigating officer's letters of 26 January and 10 February 2011 was received from the SPS on 8 March 2011.



25. With respect to part (1) of Mr A's request, the SPS explained that the information it records in relation to incidents of violence has changed over time to reflect business needs. It explained that the information provided to inform the report mentioned by Mr A was the result of an analysis of incidents at the prison, and incidents were broken down for that specific purpose. It accepted that this information, from 2005 onwards, was available through analysis of every incident. It provided a table showing the numbers of each category of incidents mentioned in part (1) of Mr A's request, except for staff on staff assaults. The SPS noted that information predating 2005 was not available as this had been destroyed in line with its records management policy.
26. The SPS also provided responses to the other questions asked by the investigating officer regarding the nature of the searches carried out to determine the extent to which relevant information was held which would address part (1) of Mr A's request.
27. In respect of part (3) of Mr A's request (concerning the number of prisoners held in segregation and who were visited by a medical officer), the SPS explained that it no longer wished to maintain that it did not hold information relating to the number of prisoners visited by medical officers. However, the SPS indicated that such information was held in the prisoners' medical files and was not readily accessible. It advised the Commissioner that it now considered that the cost of locating, retrieving and providing the information to Mr A would exceed the limit prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations), and as such, section 12(1) of FOISA was applicable to this part of the request.
28. In further communications, the investigating officer asked the SPS whether it still maintained that it did not hold information about (minor and serious) staff on staff assaults, and to explain what searches had been undertaken in relation to this type of information.
29. The SPS's response to this communication revised its position with respect to part (1) of Mr A's request. It accepted that it had incorrectly notified Mr A that it did not hold the requested information. The SPS advised that it was able to provide Mr A with information covering 2001 to November 2010, which would address those parts of his request regarding assaults by staff (i.e. (c), (d), (g) and (h) of part (1)).
30. However, the SPS advised that it was now seeking to rely on section 12(1) of FOISA for information which related to the categories of assaults by prisoners which would address parts (a), (b), (e) and (f). It noted that, in order to provide the breakdown of the incidents sought by Mr A, it would need to interrogate records relating to each incident. It considered that the cost of locating, retrieving and providing the information would cost in excess of the £600 threshold provided for in section 12(1) of FOISA.
31. The SPS wrote to Mr A on 18 March 2011, providing the information requested relation to assaults by staff, and explaining that it now considered that the cost of complying with the remaining parts of his request would exceed the £600 limit. In a further letter dated 22 March 2011, the SPS also provided Mr A with information relating to assaults by prisoners, and by staff on prisoners (relevant to parts (a), (b), (c), (e), (f) and (g) of part (1) of his request) between April 2009 and 4 November 2010.



32. Submissions were also sought and received from Mr A on the matters raised by this case.
33. In his request for review and application to the Commissioner, Mr A clearly indicated that his dissatisfaction with the SPS' handling of his request lies in relation to the SPS' response to parts (1) and (3) of his request and his view that the SPS did not provide a response to his requirement for review within the statutory timescale in section 21(1) of FOISA. These are the aspects of Mr A's information request that this decision will focus on.
34. All submissions received from the SPS and Mr A, in so far as relevant, will be considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Section 1(1) (General entitlement) and section 17(1) (Information not held)

36. Section 1(1) of FOISA creates a general right of access to recorded information held by a public authority, except where (as provided by section 1(6)) that right is disapplied by the application of one of the exemptions in Part 2 of FOISA, or another provision in Part 1 of FOISA.
37. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is that held at the time the request is received. Where a Scottish public authority receives a request for information that it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.

Part (1) Number of assaults

38. As noted above, the SPS's response to part (1) of Mr A's information request indicated that it did not hold the information regarding assaults falling into various specified categories. Following its review, it acknowledged that it did hold figures relating to assaults by prisoners broken down to minor and serious incidents (which would address parts (a), (b), (e) and (f) of part (1), but only from April 2009.
39. However, having reconsidered the matter during the investigation, the SPS acknowledged that it did hold information that would satisfy part (1) of Mr A's request.
40. During the investigation, the SPS provided details of the number of assaults by staff across the period specified by Mr A, thereby satisfying parts (c), (d), (g) and (h) of Mr A's request.



41. With respect to the categories of assaults by prisoners (parts (a), (b), (e) and (f)), the SPS confirmed that this information was held from the period April 2009 to November 2010, and this was supplied to Mr A during the investigation. For the remaining part of the period covered by Mr A's request, the SPS indicated that it could be gathered via an analysis of incidents at the prison.
42. In the light of these developments, it is clear that the SPS breached Part 1 of FOISA by wrongly giving Mr A notice in terms of section 17(1) of FOISA that it did not hold the information sought by part (1) of his request.
43. Under section 1(1), the SPS therefore should have either supplied this information, or determined that the right to supply that information was disapplied.
44. With respect to parts (c), (d), (g) and (h), the SPS has not argued that it was entitled to withhold the information, and so the Commissioner finds that the SPS breached section 1(1) of FOISA by failing to provide this information to Mr A by the time when it notified him of the outcome of its review.
45. As indicated above, the SPS provided information which it considered to fulfil these parts of part (1) of Mr A's request during the investigation, by confirming that no assaults by staff had been recorded over the period he specified. Mr A, however, has commented that he finds the information that was disclosed to him by the SPS to be inaccurate, since he was aware of a particular incident, which he considers should be recorded as relevant to these parts of his request.
46. This matter was raised with the SPS, and its response explained why the incident referred to by Mr A did not form part of the information supplied to him. In the light of this explanation, the Commissioner is satisfied that the SPS has now released all the relevant information it holds addressing parts (c), (d), (g) and (h) of part (1) of Mr A's request. He is therefore satisfied that the SPS rectified the breach of section 1(1) in relation to these parts of his request.
47. With respect to parts (a), (b), (e) and (f) (concerning assaults by prisoners), the SPS submitted during the investigation that the right to access the information in section 1(1) is disapplied by section 12(1) of FOISA, since it maintains that the cost of locating, retrieving and providing the information in response to Mr A's request would cost in excess of the prescribed limit in the Fees Regulations.
48. The Commissioner will consider the application of section 12(1) in relation to these parts of Mr A's request (and so whether the SPS breached section 1(1) of FOISA by failing to supply that information) below.



Part (3) Number of prisoners held in segregation since 1 January 2001 and number of these visited by a medical officer

49. When responding to part (3) of Mr A's request (which sought the number of prisoners held in segregation, and the number of those visited by a medical officer), the SPS provided the number of prisoners held in segregation from July 2004 to November 2010, but it notified him that it did not hold information covering the full period he had specified. It notified him that it did not hold any details of the number of prisoners who had been visited by a medical officer.
50. During the investigation, the SPS acknowledged that the number of prisoners visited by a medical officer would be available through interrogation of the medical files of those who had been held in segregation. The SPS explained that when Mr A's request was first considered, it had not been recognised that the information would be held in prisoners' medical files.
51. Therefore, the Commissioner again finds that, as the SPS does (and did at the time of Mr A's request and requirement for review) hold information which would address part (3) of Mr A's request, the SPS was wrong to notify Mr A, in line with section 17(1) of FOISA, that it did not hold the relevant information.
52. As noted above, the SPS maintained during the investigation that the right to this information in section 1(1) of FOISA is disapplied by section 12(1) of FOISA, as the cost of locating and retrieving the information from prisoners' medical files will exceed the £600 prescribed limit. The Commissioner will consider the application of section 12 to this information (and so whether the SPS breached section 1(1) of FOISA by failing to supply this information) below.

Section 12(1) – Excessive cost of compliance

53. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. The amount is currently set at £600 in terms of regulation 5 of the Fees Regulations.
54. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to the request for information exceeds this amount. If the Commissioner concludes that section 12(1) applies to the parts of Mr A's request discussed above, then he must find that the Ministers did not breach section 1(1) by failing to disclose that information to him.
55. The projected costs that the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.



Part (1) – assaults by prisoners

56. As noted above, Mr A asked for the number of assaults from January 2001 to the date of his request, broken down according to whether the victim was another prisoner or a member of staff, and according to whether the assaults were minor or serious.
57. The SPS has advised that it has attempted to ascertain the breakdown of the assaults in the detail requested by Mr A using the information systems it has available. It explained that the information being provided by these systems is not robust and leads to the provision of inconsistent information. The SPS advised that to accurately obtain the information it would have to go through each of the incidents of assault by prisoners and interrogate these individually to determine if the assault was of a minor or serious nature.
58. The SPS provided a breakdown of the costs that it considers it would incur in locating, retrieving and providing the information necessary to comply with these parts of Mr A's request. The SPS has based its breakdown on the cost of examining the medical files of the 234 prisoners who have been involved in incidents of assault in HMP Dumfries between January 2001 and November 2010.
59. The SPS stated that the information Mr A has requested is likely to be held in prisoners' medical files. For those prisoners in custody, the SPS explained that these files would be held in the prison health centre, but for those not in custody a search would have to be carried out of the archive, which may not be within HMP Dumfries. The SPS considered that it would take 30 minutes to locate and retrieve the relevant information from each file. The SPS has calculated that this will cost £1755.00, based on the hourly rate of £15 for the Nurse who would have to locate and retrieve the information due to medical confidentiality.
60. Having considered the submissions from the SPS, the Commissioner accepts that the calculations included by the SPS are reasonable, and that these are direct costs associated with locating, retrieving and providing the relevant information. The Commissioner is therefore satisfied that the cost of fulfilling parts (a), (b), (e) and (f) of part (1) of Mr A's request would cost in excess of £600 and so he finds that the SPS was entitled to refuse the parts of Mr A's request seeking information on assaults by prisoners on the grounds that section 12(1) of FOISA was applicable.

Part (3) – prisoners in segregation

61. In part (3) of his request, Mr A asked for the total number of prisoners held in segregation in HMP Dumfries since 1 January 2001, and also how many of these were visited by a medical officer.
62. The SPS has submitted that the number of prisoners held in segregation, who have been visited by a medical officer, is recorded, but could only be collated via a review of the relevant prisoners' medical files. As such, it maintained that this information is not readily accessible, and that the cost of locating, retrieving and providing this information would exceed the £600 prescribed limit.



63. The SPS provided a breakdown of the costs that it would incur. The SPS has based its breakdown on the cost of examining the medical files of the 586 prisoners held in segregation in HMP Dumfries between July 2004 and the date of Mr A's request.
64. The SPS has advised that it would take 30 minutes for it to retrieve information from each medical file of those prisoners currently held at HMP Dumfries who have been segregated. It maintained it would take an hour per medical file to retrieve the relevant information relating to prisoners who were no longer held at HMP Dumfries. The SPS calculated its staff costs based on the maximum rate of £15 an hour for this, and so concluded that retrieving information from the medical files, if a time of 30 minutes per file were assumed, would cost £4,395.00.
65. For those prisoners still in custody, the file would have to be retrieved from the health centre, but for those no longer in custody, the file would have to be retrieved from the archive, which may not be within HMP Dumfries. The SPS also explained that, due to medical confidentiality, the files would have to be reviewed by a nurse, and an explanation was given as to why it would take 30 minutes to review each file. The hourly rate of the nurse was provided. The SPS also confirmed that the costs it had calculated were only those involved in locating, retrieving and providing the information.
66. The SPS explained that HMP Peterhead was able to provide this information to Mr Smith as they had fewer files to review; it therefore HMP Peterhead less time, and the cost was within the threshold in the Fees Regulations.
67. Having considered the submissions from the SPS, the Commissioner accepts that the calculations included by the SPS are reasonable, and that these are direct costs associated with locating, retrieving and providing the relevant information. The Commissioner also accepts that the breakdown provided by the SPS relates to the files for those prisoners held in segregation between 2004 and the date of Mr A's request, and the searches that would have to be carried out to comply with Mr A's request would necessitate consideration of medical files, which would add to the cost already estimated.
68. The Commissioner is therefore satisfied that the cost of fulfilling part (3) of Mr A's request would exceed £600 and that the SPS was entitled to refuse the parts of Mr A's request seeking information on the number of prisoners held in segregation and visited by a medical officer on the grounds that section 12(1) of FOISA was applicable.

Technical breach

69. Under section 21(1) of FOISA, a Scottish public authority has 20 working days from the day after receipt of a requirement for review to provide a response to this (subject to certain exceptions which are not applicable in this case).
70. Mr A has commented that he submitted his request for review to the residential officer who was on duty within the prison on the morning of 3 December 2010.
71. The SPS responded to Mr A's requirement for review on 7 January 2011.



72. In its submissions, the SPS maintained that Mr A's requirement for review was not given to a member of SPS staff until the evening of the 3 December 2010 and, as there were no staff available to accept the request (as there were none in the office at the weekend), the request for review was received on 6 December 2010 and registered by the SPS as having been received on that date. The SPS submitted that this gave them a statutory response date of 7 January 2011 and this is when a response was received by Mr A.
73. The Commissioner agrees with the SPS that, if the request had been received by the SPS on 6 December 2010, then the 20th working day following its receipt would be 7 January 2011.
74. However, there is nothing within FOISA to indicate that, if a request (or request for review) is received after normal office hours, or is given to a member of staff who does not deal with FOI matters in the normal course of their work, that the request should be treated as having been received at a later date.
75. Having considered the submissions from Mr A and the SPS, the Commissioner finds that, on the balance of probabilities, Mr A delivered his request for review to the SPS by handing it to the residential officer on the morning of 3 December 2010. However, even if it were the case that the request for review was not submitted until the evening of 3 December 2010, this would still have been received by the SPS for the purposes of FOISA on that day and should have been recorded as such.
76. The 20th working day following 3 December 2010 was 6 January 2011, the day before the SPS responded to Mr A's request for review.
77. As a consequence the Commissioner finds that the SPS failed to respond to Mr A's requirement for review within the 20 working day timescale prescribed in section 21(1) of FOISA, and in so doing it breached Part 1 of FOISA.



DECISION

The Commissioner finds that the Scottish Prison Service (the SPS) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr A.

The Commissioner finds that the SPS incorrectly notified Mr A (in terms of section 17 of FOISA) that it did not hold information under consideration in this decision.

By failing to supply information relating to assaults by SPS staff (as sought by parts (c), (d), (g) and (h) of part (1) of Mr A's request), the Commissioner finds that the SPS failed to comply with Part 1 of FOISA (and, in particular, with section 1(1)). However, the Commissioner is satisfied that this breach was rectified during the investigation.

The Commissioner finds that the SPS was entitled to refuse the remaining parts of parts (1) and (3) of Mr A's request on the grounds that section 12 (1) of FOISA applied.

The Commissioner also finds that the SPS breached section 21(1) of FOISA in not responding to Mr A's request for review within 20 working days.

As the Commissioner is satisfied that, by the end of his investigation, Mr A had received all of the information which he was entitled to receive in response to his request, he does not require the SPS to take any action in relation to the breaches identified in this decision.

Appeal

Should either Mr A 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
14 June 2011



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.
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- ...

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.

....

21 Review by Scottish public authority

(1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...



Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

2 Interpretation

In these Regulations –

"the Act" means the Freedom of Information (Scotland) Act 2002;

"prescribed amount" means the amount prescribed in regulation 5; and

"projected costs" has the meaning set out in regulation 3.

3 Projected costs

(1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.

(2) In estimating projected costs-

(a) no account shall be taken of costs incurred in determining-

(i) whether the authority holds the information specified in the request; or

(ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and

(b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.