

# Decision Notice



Decision 163/2013 Mr N and Scottish Prison Service

Failure to respond to a request

Reference No: 201301162

Decision Date: 7 August 2013

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether the Scottish Prison Service (the SPS) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr N on 22 January 2013.

## Background

---

1. Mr N made a request to the SPS, dated 22 January 2013, requesting certain specified information.
2. The SPS informed Mr N on 22 February 2012 that the response was taking longer than expected.
3. On 8 April 2013, Mr N wrote to the SPS requesting a review of its failure to respond to his request.
4. The SPS carried out a review of its failure to respond to the request and issued its review notice on 7 May 2013, explaining the cause of the delay.
5. Mr N remained dissatisfied with the time taken by the SPS to respond to his request and he wrote to the Commissioner on 12 May 2013, stating that he was dissatisfied with that failure 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 N made a request for information to a Scottish public authority and 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

---

7. The SPS is an agency of the Scottish Ministers (the Ministers). On 19 June 2013, in line with agreed procedures, the Ministers were notified in writing that an application had been received from Mr N and were invited to comment on the application.



8. Subsequent references to submissions from the SPS are therefore references to submissions from the Ministers on behalf of the SPS.
9. The SPS responded on 24 June 2013 and its submissions are considered in the Commissioner's analysis and findings below.

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

---

10. 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, subject to certain exceptions which are not relevant in this case.
11. Since the SPS did not provide a response to Mr N's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. The SPS indicated during the investigation that, in its letter to him dated 7 May 2013, it apologised to Mr N for failing to respond to his request within the time limit set down by section 10(1) of FOISA.
13. The Commissioner notes that Mr N has obtained the information he required by other means and that he wished a determination from the Commissioner solely on the time taken to respond to his request.
14. In light of this, the Commissioner does not require the SPS to take any further action in this case, in response to Mr N's application.

### **DECISION**

The Commissioner finds that the SPS failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Mr N's request within the timescale laid down by section 10(1) of FOISA.

The Commissioner does not require the SPS to take any action in response to this failure.



## Appeal

---

Should either Mr N 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**  
**7 August 2013**



## 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

...