

Decision Notice



Decision 055/2014 Mr A and the Scottish Prison Service

Details of items bought and sold

Reference No: 201302811
Decision Date: 5 March 2014

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 23 September 2013, Mr A asked the Scottish Prison Service (the SPS) about the quantities of items bought in from suppliers and sold in the prison canteen on certain dates in July 2013. The SPS released information to Mr A. Mr A complained that some of it was illegible. He also queried whether the information was for the dates he had specified.

Following an investigation, the Commissioner found that the SPS had provided Mr A with all of the information it held and which fell within the scope of his request. The Commissioner commented that the SPS could have been more helpful in its response to his request, but did not require the SPS to take any action, for reasons explained in the decision.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections (1) and (4) (General entitlement); 15 (Duty to provide advice and assistance).

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.

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)

Background

1. On 23 September 2013, Mr A wrote to the SPS requesting the quantity of each item sold in the prison canteen on 1 and 8 July 2013. He also asked how much of each item was bought in from the prison's supplier on those two dates. (Mr A submitted other requests on the same date, but it is this request only which forms the subject of this decision.)
2. The SPS responded to Mr A's request on 21 October 2013, by disclosing information to him. It provided photocopies of original documentation (including an invoice).
3. On 26 October 2013, Mr A wrote to the SPS requesting a review on two grounds. He complained that the invoice he had been sent was illegible. He also complained that the information disclosed to him did not cover the dates specified in his request.



4. The SPS notified Mr A of the outcome of its review on 14 November 2013. The SPS confirmed the original response, but added further detail to assist Mr A by explaining that the invoice to which he had referred was the only copy it held. The SPS confirmed that the documents provided did relate to the dates specified by Mr A, and provided further explanation.
5. On 23 November 2013, 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.
6. The application was validated by establishing that Mr A 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. On 13 December 2013, the SPS was notified in writing that an application had been received from Mr A, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions.
8. The submissions from the SPS highlighted points regarding the documentation held and the dates involved.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr A and the SPS. She is satisfied that no matter of relevance has been overlooked.
10. During the investigation, the SPS was able to obtain from its supplier a more legible copy of the invoice with which Mr A had been dissatisfied. Mr A confirmed that he had received this copy and was able to read it.

Has all relevant information been retrieved and provided?

11. In Mr A's requirement for review and application to the Commissioner, he indicated that it would be impossible for the information which was released to him to be correct. Mr A said that the document supposedly relating to 1 July 2013 was date-stamped as being received on 12 July 2013.



12. The SPS was asked to explain its internal processes and clarify how the date stamps were used. The SPS explained how it replenishes stock in the canteen by completing a manual stock order form each week, which lists the products sold by the canteen. On receipt of the goods, they are checked and entered onto the canteen system. The invoice is sent to the procurement department for payment, and date-stamped at this stage. The SPS confirmed that Mr A had received information relating to the dates he had specified.
13. Having taken account of the submissions from both the SPS and Mr A, the Commissioner is satisfied that there has been a misunderstanding over the date of the information supplied to Mr A. She is satisfied that the SPS identified the information it held and which fell within the scope of Mr A's request and that this information was provided to Mr A.
14. The SPS supplied an invoice to Mr A which he contended was illegible. The SPS indicated to Mr A in its correspondence that it was the only copy of the invoice that it had. In his application, Mr A said he could accept that it may be the only one, but he also complained that the SPS "offered nothing to assist him" in understanding it. Mr A suggested it would be a matter of using the codes for each item to list the goods in another way. Mr A thought the SPS could quite easily get round the difficulties in reading the actual invoice.
15. The illegibility of the invoice was not addressed by the SPS in its initial response to Mr A; in its review response, the SPS simply advised him that the copy provided was the only one available. The Commissioner takes the view that in these circumstances, where the SPS only held an illegible copy of the information requested, it would have been more appropriate to respond to Mr A's request by giving notice, in terms of section 17(1) of FOISA, that the information was not held.
16. The Commissioner notes that the SPS obtained a legible copy of the invoice from its supplier and provided it to Mr A, during the investigation, and commends it for this action.

Section 15 – Duty to advise and assist

17. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
18. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004¹ (the Code) states in paragraph 1.3:

"The obligation to provide advice and assistance continues at the point of providing information."

The Code also makes it clear at paragraph 1.10 that:

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



“The duty to provide advice and assistance does not extend to providing additional information which falls outside the scope of the information request, or locating information held by other public authorities. However, in some situations it may be helpful to provide some form of clarification or context to their response to avoid the information disclosed being misunderstood or misinterpreted”.

19. Section 15(2) of FOISA provides that a Scottish public authority which conforms with the Code in providing advice or assistance on any case, has complied with the duty imposed by section 15(1).
20. It is clear from the Code that, under FOISA, the onus is on the authority to give advice, including clarification or explanation, where this would be help the applicant understand the response to their request. The authority should continue to give advice at the point of supplying the information. Although Mr A's dissatisfaction with the level of assistance he received seems mostly directed at the illegible invoice, the Commissioner would also comment that the misunderstandings caused by the date stamp of 12 July 2013 might have been anticipated and avoided. Had the SPS given some explanation of the information within the photocopies it was sending to Mr A, the outcome may have been a satisfied applicant, avoiding an appeal to the Commissioner.
21. For the above reason, the Commissioner finds that the SPS failed to provide Mr A with reasonable advice and assistance in making his request, and in doing so, failed to comply with section 15 of FOISA. Given the action taken during the investigation and the explanations set out in this decision notice, the Commissioner does not require the SPS to give any further advice or assistance to Mr A.

DECISION

The Commissioner finds that the SPS partially complied with Part 1 of FOISA in responding to the information request made by Mr A.

The Commissioner is satisfied that the SPS identified, located and provided all the information it held falling within the scope of the request, in compliance with section 1(1) of FOISA. However, she finds that the SPS failed in its duty under section 15 of FOISA, as set out above.

Given the reasons set out in this decision, the Commissioner does not require the SPS to take any action in response to this failure.



Appeal

Should either Mr A or the Scottish Prison Service 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
5 March 2014



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.

...

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).