

Decision Notice

Decision 065/2015: Mr D and the Scottish Prison Service

List of Qualifications

Reference No: 201500274

Decision Date: 21 May 2015



Summary

On 27 October 2014, Mr D asked the Scottish Prison Service (the SPS) for details of qualifications offered to prisoners. The SPS provided Mr D with details of courses offered and a list of qualifications.

Following investigation, the Commissioner found that the SPS failed to interpret Mr D's request properly and provide him with the information requested. She also found that the SPS had failed to give Mr D adequate advice and assistance. She was, however, satisfied that this had been rectified by the end of the investigation.

Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 27 October 2014, Mr D made a request for information to the SPS. The information requested was:

"What qualifications the SPS offer prisoners to better their chances of employment upon release."

Mr D clarified that he was not interested in courses written up or adapted by the SPS, only official and original courses within prisons in Scotland.
2. The SPS responded on 21 November 2014. It explained its approach to offering qualifications to prisoners and provided a list of SQA accredited and non-SQA accredited qualifications and courses offered within each prison.
3. On 3 December 2014, Mr D wrote to the SPS, requesting a review of its decision. He did not believe he had been provided with the information requested. To be sure that the SPS knew what information he was asking for, Mr D confirmed this as: "Any qualification that has not been written, changed or modified in any way, shape or form by the SPS or associates".
4. The SPS notified Mr D of the outcome of its review on 5 January 2015. It informed Mr D that it had complied with his request, upholding the initial response.
5. On 11 February 2015, Mr D wrote to the Commissioner's office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr D stated he was dissatisfied with the outcome of the SPS's review because the information provided was not what he had asked for.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr D made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. Given that in his requirement for review, Mr D confirmed he was seeking information on “Any qualification that has not been written, changed or modified in any shape or form by the SPS or associates”, this formed the basis of the investigation.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application.
8. On 3 March 2015, the investigating officer notified the SPS that Mr D had made a valid application to the Commissioner and was invited to comment on his application. It was asked to explain what steps it had taken to identify and locate the information covered by Mr D’s request. In this connection, it was reminded of the terms of Mr D’s requirement for review.
9. On 16 March 2015, during the investigation, the SPS wrote to Mr D. It acknowledged and apologised to Mr D that the original response did not make it clear whether the qualifications in the list provided were qualifications which had not been written, changed or modified by the SPS or associates. It clarified that some of the qualifications listed in the previous disclosure did not fall within the scope of his request and provided details. It confirmed, however, that the remaining qualifications in the list had not been written, changed or modified in any way, shape or form by the SPS or associates.
10. Mr D acknowledged receipt of this further response, but disputed the information provided was accurate, stating that he was aware that a specific SQA cleaning course had been created by a named staff member within the SPS.
11. The SPS provided a further explanation to the Commissioner, confirming that the qualification referred to by Mr D had not been created by the staff member but by the SQA. The SPS informed the Commissioner that the staff member in question had met Mr D and explained that whilst he produced the training documentation, he did not produce the actual qualification (it being standard practice that SQA produced the qualification, with the actual provision of the training varying from organisation to organisation).

Commissioner’s analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr D and the SPS. She is satisfied that no matter of relevance has been overlooked.

Information held by the SPS

13. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.

14. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
15. As indicated above, the Commissioner has approached Mr D's request on the basis of his confirmation, in asking for a review, that he was seeking details of "Any qualification that has not been written, changed or modified in any shape or form by the SPS or associates". While his request could have been clearer in distinguishing between qualifications and the courses leading to them, the Commissioner is satisfied that it was reasonable to interpret the description in the review requirement as falling fully within the scope of the original request.
16. From the submissions provided by the SPS, the Commissioner is satisfied that (by the close of the investigation) the SPS provided Mr D with a response which met the terms of his request in full. Unfortunately, its initial response to the request, confirmed on review, failed to make it clear whether any of the qualifications listed had been written, changed or modified in any way, shape or form by the SPS or associates. This confirmation was not provided until the SPS wrote to Mr D during the investigation.
17. Having considered Mr D's request, certainly at the point when he sought a review, the Commissioner is satisfied that a compliant response to it should have made clear that it related only to qualifications not written, changed or modified by or on behalf of the SPS. It failed to do this, and in fact included qualifications which did not fall within the scope of the request (as it later confirmed to Mr D). As a result, the Commissioner must find that the SPS failed to comply fully with section 1(1) of FOISA in responding to Mr D

Section 15(1) - Duty to provide advice and assistance

18. 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.
19. The SPS provided Mr D with some explanation of the courses and qualifications available when responding to his request, although it did not seek clarification of what information he was actually seeking. That said, the information on qualifications sought by Mr D should have been clear from his requirement for review. Nevertheless, the requirement for review simply confirmed the original response (incorrectly, as addressed above).
20. While Mr D was provided with a compliant response during the investigation, it is apparent from the further explanation required during the investigation (see paragraph 11 above) that Mr D did not have a full understanding of the process of creating qualifications. Given the confusion between courses and qualifications apparent in Mr D's request, the Commissioner believes this could have been anticipated: the SPS acknowledged this during the investigation, accepting that earlier engagement with Mr D might have been helpful.
21. In the circumstances, the Commissioner finds that the SPS failed to comply fully with section 15(1) of FOISA in responding to Mr D's request. Given the explanation provided in this decision (and to Mr D, during the investigation), she does not require the SPS to take any action with respect to this failure.

Decision

The Commissioner finds that the Scottish Prison Service (the SPS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr D. In failing to provide Mr D with the information requested, the SPS failed to comply with section 1(1) of FOISA.

The Commissioner also finds that the SPS failed to provide reasonable advice and assistance to Mr D, and therefore failed to comply fully with section 15(1) of FOISA.

Given that the information (and a related explanation) has now been provided to Mr D, the Commissioner does not require the SPS to take any action regarding these failures, in response to Mr D's application.

Appeal

Should either Mr D 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

21 May 2015

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.

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