

Decision Notice

Decision 031/2017: Mr John Cairney and the Scottish Prison Service

Anonymous letters

Reference No: 201602142

Decision Date: 8 March 2017



Scottish Information
Commissioner

Summary

Mr Cairney asked the Scottish Prison Service (the SPS) for information relating to the receipt of anonymous letters and subsequent actions by the SPS.

The SPS disclosed some information to Mr Cairney, who was not satisfied with the information provided. The Commissioner was satisfied that the SPS had carried out appropriate searches and disclosed any relevant information located.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 1 August 2016, Mr Cairney made a request for information to the SPS. The information requested was:
 - a) the total number of anonymous letters received by the SPS that had resulted in the decision to go straight to gross misconduct;
 - b) the total number of anonymous letters received by the SPS that had been subject to a fact finding exercise;
 - c) the total number of anonymous letters received by the SPS that had been subject to an integrity interview;
 - d) the total number of anonymous letters received by the SPS that had resulted in no further action being taken.

Mr Cairney stated he wished the information over the preceding five years, broken down by pay grade.

2. The SPS responded on 23 August 2016. It provided Mr Cairney with some information, explaining that it did not hold any information falling within the scope of part c) of his request.
3. On 23 August 2016, Mr Cairney wrote to the SPS, requesting a review of its decision on the basis that the response made no reference to pay grades and did not go back five years as requested.
4. On 28 September 2016, Mr Cairney wrote to the Commissioner's office, stating he was dissatisfied with the SPS's failure to respond to his requirement for review. This resulted in the Commissioner issuing *Decision Notice 219/2016 Mr John Cairney and the Scottish Prison Service*¹.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2016/201601767.aspx>

5. The SPS notified Mr Cairney of the outcome of its review on 12 October 2016, during the investigation which led to *Decision 219/2016*. It explained all 13 prison establishments had been consulted and that, while some information was held centrally, other information would be held in individual personnel files. In relation to information that would be contained in individual files, the SPS stated that it was relying on section 12(1) of FOISA as the cost of responding would exceed the prescribed limit.
6. The SPS provided some information that was available, with explanations.
7. On 22 November 2016, Mr Cairney wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Cairney stated he was dissatisfied with the outcome of the SPS's review because he disputed the figures provided in relation to parts a) and c) of his request. He stated he was aware of cases falling within the scope of these parts of the request which did not appear to be covered by the responses given.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr Cairney 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.
9. On 21 December 2016, the SPS was notified in writing that Mr Cairney had made a valid application. The case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on Mr Cairney's request, and answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.
11. The SPS responded, providing submissions in support of its position that, other than the information it had provided to Mr Cairney, it had not located any relevant information.

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 Cairney 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. This is 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). This is not necessarily to be equated with information an applicant believes the authority holds, or should hold.
15. The Commissioner has taken into account the submissions provided by Mr Cairney, in which he provides reasons why he believes the SPS should hold further information. In this regard,

Mr Cairney, from personal knowledge, identified cases falling within the scope of the relevant parts of the request which did not appear to be covered by the responses he was given by the SPS.

16. In its submissions to the Commissioner, the SPS provided an explanation of the workings of its policies in relation to the recording of anonymous letters it received, both centrally and at individual establishments, with particular reference to its Whistleblowing Policy.
17. The SPS explained the searches it had conducted to ascertain what information was recorded which would fall within the scope of Mr Cairney's request. The SPS confirmed that it was aware of the circumstances surrounding the cases referred to in Mr Cairney's submissions. It confirmed that it was not recorded within these case files that the allegations had come from an anonymous source. Therefore, there was no recorded information in relation to these cases that fell within the scope of Mr Cairney's request.
18. Having considered all relevant submissions and the terms of Mr Cairney's request, the Commissioner is satisfied that the SPS carried out adequate searches with a view to identifying and locating the information requested by Mr Cairney. She accepts that Mr Cairney was provided with all of the relevant information located by the SPS. Consequently, the Commissioner is satisfied that, in regard to the matters raised in Mr Cairney's application, the SPS complied with section 1(1) of FOISA in responding to Mr Cairney as it did.

Decision

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

Appeal

Should either Mr Cairney 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
8 March 2017

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.

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