

Decision Notice



Decision 044/2014 Mr B and the Scottish Prison Service

Hobbies work shed

Reference No: 201302856

Decision Date: 26 February 2014

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle

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Summary

On 5 October 2013, Mr B asked the Scottish Prison Service (the SPS) for information relating to the budget, resources and output of the Hobbies work shed at HMP Edinburgh. The SPS provided some information, but told Mr B that it did not hold the other information sought.

Following an investigation, the Commissioner found that the SPS had provided Mr B with the information it held, along with appropriate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15 (Duty to provide advice and assistance); 17(1) (Information not held)

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 5 October 2013, Mr B wrote to the SPS requesting a variety of information relating to the budget, resources and output of the Hobbies work shed at HMP Edinburgh, including the following:
 - a) Precisely and exactly what was the budget assigned to the Hobbies work shed at HMP Edinburgh for the financial year beginning on 1 April 2013?
 - b) Precisely and exactly how many pens have been made for the Governor/Senior Management by the Hobbies work shed at HMP Edinburgh?
 - c) Precisely and exactly how many picture frames have been made by the Hobbies work shed since 1 April 2013 and who were they made for?
2. The SPS responded on 23 October 2013. The SPS provided Mr B with some information, alongside copies of purchase requisition forms. In relation to points a), b) and c), the SPS notified Mr B that it did not hold the information he sought.



3. On 5 November 2013, Mr B wrote to the SPS requesting a review of its decision. He asked for the purchase requisition forms in a different format. He did not accept that the SPS held no information falling within the scope of points a), b) and c).
4. The SPS notified Mr B of the outcome of its review on 25 November 2013. The authority provided Mr B with the requisition forms in the format requested and confirmed that it did not hold any information falling within the scope of points a), b) and c).
5. On 26 November 2013, Mr B 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 B 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 B and was given an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA.
8. In his application, Mr B stated that he was dissatisfied with the SPS's response to points a), b) and c), and did not believe the SPS had provided him with adequate advice and assistance in dealing with his request. The investigating officer's questions, and the SPS's submissions, focused on these issues.

Commissioner's analysis and findings

9. 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 B and the SPS. She is satisfied that no matter of relevance has been overlooked.

Information held by the SPS

10. 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 applicable in this case.



11. 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 *should* hold. If no relevant information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

Point a) – budget

12. The SPS stated that the Hobbies work shed does not have an allocated budget of its own. It shared a budget with a number of other areas. It explained that a cost centre identified by the investigating officer as potentially relevant related to the wider area of vocational training, funding numerous work and training areas and not just the work sheds. In addition, the SPS explained that some materials were donated, so it was not possible to quantify a cost figure for all materials used in the shed.

Points b) and c) – output

13. The SPS explained that the Hobbies work shed was a therapeutic environment to provide activity, not work. Consequently, there was no requirement to record how many articles were made. Items made were not made for sale and tended to be made dependent upon the skills and needs of those attending the shed on a particular days. They were either kept by the prisoner, or utilised or gifted elsewhere in the establishment.
14. During the investigation, Mr B made reference to a black book, kept in the Hobbies work shed, which he believed to be a ledger of the items made there.

Searches

15. In terms of searches conducted, the SPS explained that the manager with responsibility for the area conducted a search of the records relevant to the Hobbies work shed, and identified and provided copies of all the purchase records for materials purchased. A search was also conducted of the work shed itself, including discussions with individual staff working there. As no further relevant records were kept, none were found: there was an attendance record, from which the SPS provided sample pages, but not a ledger of the kind alluded to by Mr B. The SPS confirmed that all the information concerning budgets was held on its financial system, which was the only place it needed to search for relevant financial records.
16. Having considered all relevant submissions, the Commissioner accepts that the SPS interpreted Mr B's requests reasonably and took adequate and proportionate steps in the circumstances to establish what information it held and which fell within the scope of the requests. Given the explanations provided, she is satisfied that the SPS did not hold the information which forms the subject of this application.
17. The Commissioner is therefore satisfied that the SPS was correct to give Mr B notice, in terms of section 17(1) of FOISA, that it did not hold any information falling within the scope of points a), b) and c).



Section 15 – Duty to provide advice and assistance

18. In his application, Mr B stated that he did not believe the SPS had fulfilled its duty to provide him with advice and assistance. He did not provide any basis for this assertion.
19. Section 15 of FOISA requires Scottish public authorities to provide advice and assistance to requesters and those who intend to make requests for information, so far as it is reasonable to expect the authority to do so.
20. The SPS stated that it had met Mr B's requirements in relation to the format of the information provided. From Mr B's request, requirement for review and application to the Commissioner, it did not appear that further advice and assistance were required in the circumstances.
21. The Commissioner has considered the guidance on the types of advice and assistance suggested in the 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)¹. Paragraph 1.3 of the Section 60 Code states that authorities should ... *have regard to their duties under equality legislation such as the Disability Discrimination Act in ensuring accessibility for all.*
22. The Commissioner notes that, although Mr B did not stipulate a particular format (or any other accessibility requirements) in his information request, the SPS provided him with the information in the format requested when the issue was raised in his requirement for review.
23. The Commissioner has considered the way in which Mr B's request and requirement for review were handled by the SPS. In the absence of any specific basis for Mr B's concerns in relation to advice and assistance, the Commissioner is satisfied that it complied with its duties under section 15 of FOISA in dealing with the request.

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 B.

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



Appeal

Should either Mr B 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
26 February 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).

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,

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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.