

Decision Notice

Decision 175/2018: Mr G and the Scottish Prison Service

Restrictions on access to prisoner telephones

Reference No: 201801262

Decision Date: 1 November 2018



Scottish Information
Commissioner

Summary

The SPS was asked about restrictions on access to prisoner telephones.

The SPS disclosed information. The applicant remained dissatisfied, believing the SPS held more information.

Following an investigation, the Commissioner was satisfied that the SPS had carried out appropriate searches and had disclosed all the relevant information it held.

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 31 October 2017, Mr G made a request for information to the Scottish Prison Service (the SPS). Referring to a specific date when access to prisoner telephones had been restricted, Mr G requested all and any information held by local management in terms of restrictions imposed under the relevant Direction.
2. The SPS responded on 13 November 2017, informing Mr G that, following a search of paper and electronic records, it had established that it did not hold the information requested. The SPS provided Mr G with a copy of the Scottish Prison Rules (Telephones – HMP Edinburgh) Direction 2011 for information.
3. On 10 January 2018, Mr G wrote to the SPS, requesting a review of its decision as he believed the SPS had withheld information falling within the scope of his request and not relied on any exemption in so doing.
4. Mr G said he understood that the restriction had been imposed in terms of paragraph 4(3) of the Scottish Prison Rules (Telephones) Direction 2011. (This allows a Governor to withdraw the entitlement to use a prisoner telephone in certain circumstances.) Mr G noted that, under paragraph 4(4) of that Direction, any decision to withdraw the entitlement must be reviewed by the Governor. He believed information should be held on this process, and also on the particular circumstances relied upon for withdrawing the entitlement.
5. The SPS notified Mr G of the outcome of its review on 28 January 2018, upholding its original decision with modifications. The SPS provided Mr G with some further information, namely a copy of a Risk Assessment for the date of the restriction referred to in the information request.
6. On 26 July 2018, Mr G wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr G stated he was dissatisfied with the outcome of the SPS's review as he believed the SPS ought to hold information concerning restrictions on a legal entitlement, yet it had not explained why this information was not held.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr G had made a request for information to a Scottish public authority and had asked the authority to review its response to that request before applying to him for a decision.
8. On 28 August 2018, the SPS was notified in writing that Mr G had made a valid application and the case was allocated to an investigating officer.
9. 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 this application and answer specific questions, with particular reference to the searches carried out to identify and locate the information requested. The SPS provided submissions in response.

Commissioner's analysis and findings

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

Whether the SPS held any further information

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
13. The Commissioner has taken account of the arguments in both Mr G's requirement for review and his application, in which he provides reasons as to why he considers the SPS should hold further information falling within the scope of his request.
14. In its submissions to the Commissioner, the SPS explained that due to an unexpected event on the day in question, the regimes operating within accommodation blocks in the prison in question had to be changed, resulting in prisoners having to remain in their cells. This included a restriction on prisoners' access to telephones.
15. The SPS provided the Commissioner with copies of the Directions pertaining to telephone access.
16. The SPS confirmed that it held no further information falling within the scope of Mr G's request, other than that already provided to him. It explained the searches and enquiries it had undertaken at the times it had considered both Mr G's request and his requirement for review, with explanations of why it considered these adequate in the circumstances.

17. The SPS explained that, at the time it considered Mr G's original request, key members of staff were contacted and confirmed that no information falling within scope was held.
18. The SPS further explained that, in addition to searches of the Prisoner Notice Board and the applicant's previous information requests, an electronic search of the Prison Resource Library (held on a Sharepoint site) had been carried out: no relevant information had been identified.
19. The SPS explained that the Direction provided to Mr G with its initial response was specific to HMP Edinburgh, and listed the general time periods when telephone access must be made available to prisoners. Although the SPS initially considered this information to fall within scope, it recognised that Mr G's information request was clearly focused on information concerning the restriction on the day in question, as opposed to the general daily timing restrictions. The SPS further acknowledged that copies of the Prison Rules, containing the lawful basis on which restrictions could be imposed, were available in accommodation blocks and in the Prison Library, and so were accessible by Mr G.
20. The SPS explained that, when it considered Mr G's requirement for review, the searches carried out at initial response stage were believed to be sufficient. However, a further search of the Sharepoint site had been conducted and no information falling within scope was identified.
21. Referring to the Risk Assessment disclosed at review stage, the SPS explained that this had been identified as a result of the knowledge of the reviewer, having managed such matters. The Risk Assessment had been completed by the manager of the relevant area on the day in question and was held by that individual. This information had not been identified at the initial response stage as the staff member involved in responding had not been aware of its existence, given its limited circulation and the circumstances of its creation.
22. The SPS explained that the Risk Assessment had resulted in the restriction to the regime (including telephone access). Acknowledging that it contained information on staffing levels, and not restrictions on telephone access, the SPS still considered it appropriate to include this within the scope of the request, on a broad interpretation.
23. During the investigation, the SPS carried out a further search of the Sharepoint site: no additional information was identified.
24. The SPS concluded that the only information it held and which fell within the scope of the request had already been provided to Mr G.
25. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the SPS took adequate, proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of Mr G's request. He accepts that any information relevant to the request would have been identified through the searches described by the SPS. The Commissioner is therefore satisfied, on the balance of probabilities, that the SPS does not (and did not, on receipt of the request), hold any further information falling within the scope of the request.
26. The Commissioner acknowledges Mr G's point that the Scottish Prison Rules (Telephones) Direction 2011 stipulates the circumstances in which telephone access may be withdrawn and the need to review any such decision periodically. He must also note, however, that the Direction contains no requirement to maintain records on these matters. Whether it should, or whether such records should nonetheless be maintained, are not matters on which the Commissioner has any locus to comment.

27. In all the circumstances, therefore, in respect of the information held, the Commissioner is satisfied that the SPS responded to Mr G's request in accordance with Part 1 of FOISA.

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 G.

Appeal

Should either Mr G 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

1 November 2018

Appendix 1: 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.

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