

Decision Notice



Decision 214/2010 Mr Neil D Robertson and the Scottish Prison Service

Orderly Room Procedures and Guidance

Reference No: 201001898

Decision Date: 21 December 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Neil D Robertson (Mr Robertson) requested from the Scottish Prison Service (the SPS) a copy of the Orderly Room Procedures and Guidance (ORPG). The SPS failed to reply to this request, and Mr Robertson asked for a review of this decision. The SPS responded to this request and advised Mr Robertson that the ORPG was already accessible to him via the prison library and therefore it was not required to provide him with a copy. Mr Robertson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the SPS confirmed that it considered the ORPG to be exempt from disclosure in terms of section 25(1) of FOISA, the Commissioner found that the SPS had partially failed to deal with Mr Robertson's request for information in accordance with Part 1 of FOISA. He found that the SPS was entitled to withhold the requested document in terms of section 25(1) of FOISA. However, the Commissioner, found that the SPS failed to respond to Mr Robertson's request for information within the timescale laid down by section 10(1) FOISA. He did not require the SPS to take any action in response to this failure.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(2)(a) (Effect of exemptions); 10(1) (Time for compliance); and 25(1) (Information otherwise accessible)

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 15 July 2010, Mr Robertson submitted a written request to the Scottish Prison Service (SPS) asking for the information contained in the document *Orderly Room Procedures and Guidance (ORPG)*.
2. The SPS did not respond to this request.
3. On 27 August 2010, Mr Robertson wrote to the SPS requesting a review of its handling of its request.



4. The SPS notified Mr Robertson of the outcome of its review on 20 September 2010. In this letter, the SPS stated that it had failed to recognise Mr Robertson's initial request as a freedom of information request, and it apologised for this oversight. The SPS also advised Mr Robertson that the ORPG was already accessible to him via the prison library, and that consequently the SPS was under no obligation to provide him with a further copy of the item.
5. On 4 October 2010, the Commissioner received a letter from Mr Robertson 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 Robertson had made a request for information to a Scottish public authority and had 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. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing, on 27 October 2010, that an application had been received from Mr Robertson and that an investigation into the matter had commenced.
8. The Ministers were also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. Subsequent references to submissions from the SPS are references to submissions made by the Ministers' Freedom of Information Unit on behalf of the SPS.
9. The SPS responded on 16 November 2010. The investigating officer also requested and received additional submissions from the SPS, in which it confirmed that it considered the exemption in section 25(1) of FOISA to be applicable to the information requested by Mr Robertson.

Commissioner's analysis and findings

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



Section 25 – Information otherwise accessible

11. Although the SPS did not explicitly refer to section 25 of FOISA in its response to Mr Robertson, it has confirmed that it considered that the exemption in section 25(1) to be applicable to the ORPG.
12. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
13. The SPS has submitted that the document sought by Mr Robertson is exempt from disclosure in terms of section 25 of FOISA, because it is held in the prison library and is therefore reasonably accessible to him.
14. In its submissions to the Commissioner, the SPS explained that the accommodation block in which Mr Robertson is held has scheduled access to the library one day per week. The SPS submitted that prisoners are not confined to using the library only on their allocated day, and they can request to attend on different days and in the past these requests have been facilitated. The SPS noted that Mr Robertson has not made a request to attend the library outwith the allocated day and that he has not raised any concerns (with SPS staff) about lack of access to any documents or to the library. The SPS also maintained that it is satisfied that Mr Robertson is not constrained by the need to have access to information within a short time frame and it therefore considers that the information he is seeking is reasonably accessible to him.
15. The SPS noted that the document sought by Mr Robertson is 60 pages in length. The SPS advised that Mr Robertson could have requested and paid for the document to be photocopied, and that if he had done so it is likely his request would have been facilitated. The SPS also advised that if Mr Robertson could not afford to pay for an entire copy of the document, he could have engaged with prison staff to identify the specific sections he needed, thus minimising the costs incurred. The SPS also noted that if the section(s) required was/were minimal there is a possibility that copy fees may have been waived altogether.
16. Mr Robertson stated in his application that the ORPG cannot be removed from the prison library and that access to the library is, at best, restricted to thirty minutes, once weekly. Mr Robertson conceded that he has previously viewed the ORPG, but he argues that the document is couched in legalese and that an individual would need a significant amount of time to read and digest its contents properly. He argues that this cannot be obtained in a thirty minute access slot once a week.



17. Mr Robertson also submitted that (according to the rules set out within the ORPG), the document should be made available to prisoners upon request, prior to Orderly Room disciplinary proceedings but that management at the institution where he is housed have consistently failed to comply with this. Mr Robertson alleges that he has formally requested the ORPG prior to the commencement of Orderly Room disciplinary proceedings on three separate occasions, but was neither provided with the document, nor given any reason as to why it was being withheld from him. He considers the latter to be a breach of rule 5.21 of the ORPG.
18. Mr Robertson alleges that he has, at no point, been advised by SPS staff that he is permitted to copy the ORPG, but submits that even if this was the case he has limited funds with which to do so.
19. The Commissioner has considered the arguments of both parties and he acknowledges that, given the library access he is currently afforded, Mr Robertson does not feel that he is provided with enough time to become suitably familiar with the contents of the ORPG.
20. However, the Commissioner notes that Mr Robertson has acknowledged that he has previously accessed the document from the prison library on at least one occasion, and that his submissions evidence that he is sufficiently familiar with its contents to be able to cite specific rules/sections to the Commissioner in his arguments. Given this, along with the comments made by the SPS, it is the Commissioner's view that Mr Robertson has accessed the ORPG in the past without recourse to FOISA, and that SPS procedures are sufficient to allow him to do so in the future.
21. The Commissioner therefore considers that Mr Robertson can reasonably obtain the ORPG other than by requesting it under FOISA, and he finds the information to be exempt from disclosure in terms of section 25(1) of FOISA.

Technical breach

22. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
23. In this case, the Commissioner notes that the SPS did not provide a response to Mr Robertson's initial request of 15 July 2010. Accordingly, the Commissioner finds that the SPS failed to respond to Mr Robertson's request for information within the 20 working days allowed by section 10(1) of FOISA.



DECISION

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

The Commissioner finds that the SPS was entitled to withhold the Orderly Room Procedures and Guidance from Mr Robertson on the grounds that it was exempt from disclosure under section 25(1) of FOISA. Consequently, the SPS did not breach Part 1 of FOISA by refusing to supply this information.

However, the Commissioner also finds that the SPS failed to comply with Part 1 of FOISA by failing to respond to Mr Robertson's request for information within the timescale laid down by section 10(1) of FOISA.

He does not require the SPS to take any action in response to this failure.

Appeal

Should either Mr Robertson or the Scottish Prison Service wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
21 December 2010



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.
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
- ...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

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