



Decision Notice 001/2023

Email-A-Prisoner (EMAP) – failure to respond

Applicant: The Applicant

Authority: Scottish Prison Service

Case Ref: 202201411

Summary

The Applicant asked the Authority for information about the technical and organisational measures taken regarding the “Email-A-Prisoner” (EMAP) service. The Applicant also wanted details on remuneration levels and arrangements with Unilink regarding the EMAP service. This decision finds that the Authority failed to respond to the request and request for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. On 2 September 2022 the Applicant made an information request to the Authority.
2. The Authority did not respond to the information request.
3. On 28 October 2022, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority’s failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 8 December 2022.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority acknowledged that the request and requirement for review had been received and that it had failed to respond to the Applicant. The Authority confirmed that it cannot explain why the Applicant's correspondence was not passed to the relevant parties to respond to the Applicant's information request and requirement for review.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
11. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. The Authority responded to the Applicant's requirement for review on 20 December 2022, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
15. The Commissioner notes that the Authority has apologised to the Applicant for its failure to comply.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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.

Colin MacFadyen
(Acting) Deputy Head of Enforcement
11 January 2023