

Decision Notice



Decision 134/2011 Mr H and the Scottish Prison Service

Whether requests vexatious

Reference No: 201100862

Decision Date: 7 July 2011

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Summary

Mr H made a number of requests for information to the Scottish Prison Service (the SPS). The SPS responded by stating that it considered Mr H's requests to be vexatious in terms of section 14(1) of FOISA. Following a review, which upheld the position that the requests were vexatious, Mr H remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had dealt with Mr H's request for information in accordance with Part 1 of FOISA, being satisfied that it had been justified in dealing with the requests as vexatious.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 21(1), (8)(b), (9) and (10) (Review by Scottish public authority).

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 24 March 2011, Mr H wrote to the SPS requesting the following information:

Request 1: (Given reference DUM/126/11 by the SPS)

Please provide me with the following information from the Scottish Prison Service, Financial Policy and Guidance Manual:

Chapter 10 - Cash and Banking
Chapter 11 - Purchasing/Payments
Chapter 14 - Fixed Asset Management
Chapter 15 - Capital Investment Appraisal
Chapter 17 - Prisoner-related Travel and Discharge Grants.
Chapter 20 - VAT
Chapter 22 - Trading Accounts
Chapter 28 – Miscellaneous



Chapter 30 – Glossary of Financial Terms and Acronyms

Request 2: (Given reference DUM/127/11 by the SPS)

- a. In the past 7 years how many prison officers in this establishment have been subject to gross misconduct proceedings?
- b. The general acts, which constitute gross misconduct, that were investigated in these cases.
- c. In the past 7 years how many prison officers in this establishment have been subject to summary dismissal?
- d. In the past 7 years how many prison officers in this establishment have been charged or convicted of an offence?
- e. In the past 7 years how many prison officers in this establishment have been subject to a Police enquiry?
- f. In the past 7 years how many prison officers in this establishment have been suspended from duty?
- g. The general acts which constituted suspension in these cases.
- h. How many prison officers in this establishment are currently suspended from duty and what has constituted suspension in these cases?

Request 3: (Given reference DUM/128/11 by the SPS)

- a. The cost price, including VAT, for each item sold in the prison canteen in the first week of every calendar month for the past 3 years.
- b. The net profit, per canteen sale, on each item sold in the prison canteen in the first week of every calendar month for the past 3 years.
- c. The overall profit the establishment made on each of the above weeks.
- d. The overall profit the establishment made per month for the past 3 years.
- e. A breakdown of the Common Good Fund for the past 3 years, including how the funds were raised, exhausted and interest made.

Request 4: (Given reference DUM/129/11 by the SPS)

- a. Local Procedures and Instructions for the operation of prisoners' canteen.
- b. A breakdown of all stock written off to Account code 6202 for the past 3 years.
- c. A breakdown of the "Free" supplies received from suppliers for the past 3 years, including how these items have been accounted for by means of a reduced cost per unit.
- d. A breakdown of all payments made to prisoners' from the Common Good Fund for the past 3 years, including the benefit of such payments.



- e. A record of all assets (e.g. televisions, gage stations, dvd's, pool tables etc.) that has been purchased for the benefit of all inmates in custody at this establishment for the past 3 years.
 - f. A copy of (Standing Order Ja.10), including any current Procedures and Instructions.
2. On 25 March 2011, Mr H wrote to the SPS requesting the following information:
- Request 5: (Given reference DUM/130/11 by the SPS)**
- a. Local procedures and instructions for provision of copies of SPS responses to FOI request to give to the Commissioner so that he may investigate a complaint.
 - b. In the past year how many prisoners held at HMP Dumfries have been charged for copies of SPS responses to FOI requests to give to the Commissioner so that he may investigate complaints?
 - c. In the past year how many prisoners held at HMP Dumfries have had such charges refunded after complaining to the Commissioner?
 - d. Copies of all letters, emails etc., that HMP Dumfries has sent or received from the Commissioner in regard to the above (in redacted form if necessary).
3. The SPS responded on 1 April 2011. It informed Mr H that while it endeavoured to provide information where possible, it considered his requests of 24 and 25 March 2011 to be vexatious in terms of section 14(1) of FOISA. The SPS provided arguments in support of this position.
4. On 4 April 2011 Mr H wrote five separate letters to the SPS, in each case asking it to review its decision. He disagreed with the SPS's reasons for designating the requests vexatious.
5. The SPS notified Mr H of the outcome of its review on 6 May 2011. The SPS informed Mr H that in terms of section 21(8)(b) of FOISA it was not obliged to comply with his request for review, as the original request had been dealt with as vexatious and it continued to be of that view.
6. On 11 May 2011 Mr H wrote to the Commissioner in respect of each of his requests, 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.
7. The application was validated by establishing that Mr H had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



Investigation

8. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 16 May 2011 that an application had been received from Mr H. As required by section 49(3)(a) of FOISA, they were asked to provide comments on the application and in particular to justify the SPS's reliance on section 14(1) of FOISA. Subsequent references to correspondence to and from the SPS should be read as including correspondence to and from the Ministers on its behalf.
9. The SPS responded on 6 June 2011, confirming reliance on section 14(1) of FOISA and expanding on its reasoning. The relevant submissions received from both the SPS and Mr H will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Section 14(1) – Vexatious requests

11. Section 14(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information under section 1(1) (which confers a general entitlement to information held by such authorities) if the request is vexatious.
12. If the SPS was correct in its application of section 14(1), it would be under no obligation to comply with Mr H's request (although it would remain under an obligation to, for example, notify Mr H that it was not complying with his request and why).

Whether a request is vexatious

13. FOISA does not define the word "vexatious." The Commissioner's general approach (see his briefing on section 14¹) is that a request (which may be a single request, the latest in a series of requests, or one among a large number of individual requests) will be vexatious where it would impose a significant burden on the public authority and one or more of the following conditions can be met:
 - (a) it has the effect of harassing the public authority; and/or
 - (b) it does not have a serious purpose or value; and/or
 - (c) it is designed to cause disruption or annoyance to the public authority; and/or

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2513&sID=2591>



- (d) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

Significant burden

14. The Commissioner in his briefing has indicated that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its financial and human resources away from its core operations. However, if the expense involved in dealing with a request is the only consideration involved, the authority should consider the application of section 12 of FOISA (excessive cost of compliance).
15. In considering significant burden, the SPS submitted that the five requests from Mr H had been received within 24 hours and amounted to more than 32 individual requests for information. It drew attention to that part of the Commissioner's guidance indicating that a public authority could consider a large number of requests collectively when assessing the burden they imposed on the authority. It went on to submit that the requests in question largely concerned information held, or which would require to be sourced, by HMP Dumfries.
16. The SPS indicated that it operated a devolved structure for the management of FOI requests and that to answer these requests within the statutory timescales afforded by FOISA would present a significant burden on the administration of Dumfries prison. It did not believe that the prison could reasonably be expected to deal with the requests in accordance with the requirements of FOISA without serious detriment to the day-to-day work of the staff there.
17. It further argued that a number of the applicant's questions sought financial information regarding the prisoners' canteen and purchases. The requests had been submitted at the end of the financial year and the finance manager was actively engaged in reconciling budgetary expenditure for the purpose of completing HMP Dumfries's contribution to the SPS Annual Accounts and managing the introduction of new budgets for the coming year: he would, accordingly, would have faced severe difficulty in undertaking this work alongside those other requirements.
18. The SPS also noted that some of Mr H's requests were closely aligned to previous requests and attempted to obtain information refused to the applicant in previous requests (Chapter 10 of the Finance Policy and Guidance Manual) or information he had previously been informed was not held (prosecution of prison officers for gross misconduct etc).



It has the effect of harassing the public authority

19. The SPS put forward three reasons for considering Mr H's requests to have this effect. Firstly, it considered this to have been the result of the disproportionate number of requests he had submitted, even if it had not been his intention. The SPS explained that Mr H had written on more than 25 occasions in the past financial year, making in excess of 60 requests for information, most of these (50 separate requests) requiring a response from HMP Dumfries. It went on to explain that HMP Dumfries was a small local prison serving South West Scotland, holding approximately 200 prisoners (compared to 1,700 in its largest prison). The average number of requests made by the remaining prisoners there was 0.08 per prisoner, and Mr H's requests were therefore 262.5 times the average.
20. Secondly, the SPS explained that it had a complaints procedure available to prisoners, whereby complainants could refer matters to the Scottish Public Services Ombudsman if remaining dissatisfied. It indicated that in the last financial year Mr H had made some 59 complaints at HMP Dumfries. While not suggesting that these complaints might not have been valid, the SPS believed it was clear from the applicant's complaint history that many of the requests made by him under FOISA had followed such complaints. Against this background, it considered these latest requests had the effect of harassing the authority.
21. Finally, the SPS also stated that it was not unreasonable to conclude that the requests were aimed at harassing an individual, in that he had repeatedly sought to undermine a specified member of staff at the prison.

It is designed to cause disruption or annoyance to the public authority

22. The SPS further submitted, given the disproportionate number of requests made by Mr H and the number of complaints he had made, that the current large number of requests was intended to cause disruption or annoyance to HMP Dumfries.
23. The SPS referred to Mr H's application to the Commissioner, where he had stated in support of his requests that:
 - the SPS was covering up "financial inconsistencies"
 - the SPS was "wilfully suppressing" requested information
 - staff at HMP Dumfries "spend a considerable amount of their time and resources attempting to find out ways of how to circumvent the Act".

It did not consider a reasonable person likely to think that matters such as "financial inconsistencies", which were subject to internal and external audit, were likely to be uncovered by a prisoner at a prison. If such financial inconsistencies existed at the prison, it suggested that these would have been subject to complaint from others or detected during auditory procedures.



24. Also with reference to Mr H's application, the SPS noted various examples of the language he had used (including those identified in the previous paragraph, and also other references it considered disrespectful to staff at the prison or which questioned the propriety of their handling of requests for information). It acknowledged that the language used in the requests themselves was appropriate, but submitted that the language used in the application should also be considered by the Commissioner.

It would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate

25. The SPS also submitted that to identify the information falling within scope of the 32 requests for information would incur a significant resource at the outset. It estimated that at an average of 2 hours per request it would take 64 hours to locate, retrieve and collate the information. Given the number of requests made by Mr H and its efforts to date to operate in the spirit of FOISA, the SPS considered it reasonable to conclude that the large volume of requests was vexatious. It noted that it received more than 250 communications from applicants in any year, all containing numerous requests for information. Many of these communications were from prisoners who exercised their right to information responsibly. On this occasion, however, it was of the view that the right was not being exercised responsibly by Mr H.
26. The SPS also drew the Commissioner's attention to the applicant's identity and history, which it considered relevant in this case. It recorded its concern in relation to his pattern of behaviour, as outlined above. In this context, it considered the large number of requests for information, on this occasion and previously, to be greatly disproportionate.
27. While acknowledging that the cost limit in section 12 of FOISA might apply to individual requests, it suggested that the significant burden on HMP Dumfries in this case was not simply a matter of cost.
28. The SPS did not believe it had taken this decision lightly. It stated that it had provided a very considerable amount of information to the applicant, more than to any other prisoner in the custody of the Scottish Prison Service. It had also engaged with him on many occasions to resolve any matters which he felt remain unresolved (without recourse to FOISA, as it believed there were often more effective ways of trying to find a pragmatic solution to matters). It could identify nothing in its own conduct which had contributed to the current state of affairs.



Comments from Mr H

29. Mr H did not believe the SPS to have any valid reason for considering his requests to be vexatious, believing them to be perfectly reasonable requests for information. He believed the majority of the information he had requested was held electronically and therefore the requests would not constitute a significant burden. He believed the SPS's references to his previous lengthy correspondence and use of the complaints process to be spurious, ambiguous, wilful and malicious, with no foundation under FOISA. In his application to the Commissioner he stated that he had only made 14 requests for information in the previous financial year, although in seeking a review he had referred to having made 21 requests over the same period. He expressed various concerns about the SPS's handling of requests for information, particularly at HMP Dumfries.

The Commissioners' conclusions

30. The Commissioner must confine himself in this decision to considering whether the SPS was correct in determining that Mr H's requests were vexatious in terms of section 14(1) of FOISA. This means that there are a number of issues which he cannot consider or comment upon. In particular, it does not fall within the Commissioner's remit to consider or comment upon the complaints system operated by the SPS.
31. Having considered all relevant submissions, the Commissioner accepts that it was appropriate in this case for the SPS to consider collectively the effect of all five requests under consideration here. To all intents and purposes, these requests were made together. Given their nature, he also accepts that Mr H's wider history and dealings with the authority are relevant to any consideration of this current case. He has taken into account, therefore, the volume of Mr H's correspondence with the SPS as a whole: whichever figure is accepted, the overall volume is clearly significant in relation to the total number of requests dealt with by the SPS.
32. In this context, the Commissioner notes the SPS's submissions on the burden it considers Mr H's requests to have imposed on HMP Dumfries. While responsibility for compliance with FOISA is corporate rather than specific to individual establishments (even where devolved administrative arrangements may offer the most appropriate means of dealing with the majority of requests), he acknowledges that it is appropriate to give at least some weight to this factor. In doing so, he recognises the extent to which this applicant's requests have (perhaps inevitably) focused on the establishment in question, and also the particular demands inherent in managing a prison.
33. Taking all of the relevant submissions into consideration, the Commissioner is satisfied that dealing with Mr H's requests, when viewed in context, did present a significant burden to the SPS. Having considered the SPS's arguments, he is prepared to accept that a reasonable person would consider Mr H's requests, taken as a whole in the particular circumstances of this case, to be disproportionate. In reaching this conclusion, he acknowledges that in many cases there will be more appropriate (and potentially less burdensome) avenues for pursuing the applicant's concerns, assuming them to be well-founded.



34. Mr H has expressed concern about the SPS's compliance with FOISA and related good practice, with particular reference to the culture which he believes to be prevalent at HMP Dumfries. His concerns do not, however, appear to be borne out by the findings of the Commissioner's recent practice assessment of the SPS². This identified a number of areas for development but not the kind of unacceptable culture and practice Mr H believes to exist. While not published at the time the SPS dealt with Mr H's requests, the findings of the assessment were known to the authority at that time and the Commissioner considers it appropriate to take them into account in determining whether a reasonable person would have regarded the requests as disproportionate.
35. The Commissioner has also gone on to consider the SPS's other submissions in respect of the requests and their effects. He is not persuaded that the requests were intended by Mr H to cause disruption or annoyance. He is, however, inclined to accept the authority's arguments to the effect that they had the effect of harassing it. He finds that a reasonable person would consider this to be the effect of Mr H's requests, taken as a whole and bearing in mind their focus on a specific establishment and certain individuals within it.
36. In all the circumstances of this case, therefore, the Commissioner has concluded that the SPS was correct in finding that Mr H's requests were vexatious in terms of section 14(1) of FOISA.

Handling of requirement for review

37. Mr H also asked the Commissioner to investigate why SPS Headquarters (to which his requests for review had been addressed) did not conduct a review in this case. In the circumstances, having concluded that the SPS was entitled to deal with Mr H's requests as vexatious, the Commissioner is satisfied that it was also entitled (as it did) to respond to his requests for review in terms of section 21(8)(b) of FOISA, that is on the basis that the original requests for information were vexatious. He is also satisfied that the response to Mr H's review requests met the requirements of section 21(9) and (10) of FOISA (see Appendix) and therefore has no concerns about the form of that response. The Commissioner does not consider there to be any basis in either law or good practice for requiring or expecting the response in question to be provided by SPS Headquarters rather than the prison to which the original requests were addressed. The response was made from within the prison, by an officer not involved in the handling of the original requests: in the circumstances, the Commissioner considers that to have been an appropriate response.

DECISION

² <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=4751&SID=2756>

Decision 134/2011
Mr H
and the Scottish Prison Service



The Commissioner finds that the Scottish Prison Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr H.

Appeal

Should either Mr H 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.

Kevin Dunion
Scottish Information Commissioner
7 July 2011



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.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-

...

- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.