

Decision Notice

Decision 131/2019: Mr K and the Scottish Prison Service

Autistic Spectrum Disorder: failure to respond within statutory timescales

Reference No: 201901093

Decision Date: 27 August 2019



Scottish Information
Commissioner

Summary

On 31 December 2018, Mr K asked the Scottish Prison Service (SPS) for information about Autistic Spectrum Disorder. This decision finds that the SPS failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the SPS failed to comply with Mr K's requirement for review within the timescale set down by FOISA.

Background

Date	Action
31 December 2018	Mr K made an information request to the SPS.
	The SPS did not respond to the information request.
2 March 2019	Mr K wrote to the SPS requiring a review of its failure to respond.
	Mr K did not receive a response to his requirement for review.
27 June 2019	Mr K wrote to the Commissioner's Office, stating that he was dissatisfied with the SPS's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
1 August 2019	The SPS was notified in writing that an application had been received from Mr K and was invited to comment on the application.
6 August 2019	The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

1. 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
2. It is a matter of fact that the SPS did not provide a response to Mr K's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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.
4. It is a matter of fact that the SPS did not provide a response to Mr K's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
6. The SPS provided a response to Mr K's requirement for review on 6 August 2019.

Decision

The Commissioner finds that the Scottish Prison Service (SPS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr K. In particular, the SPS failed to respond to Mr K's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of these failures, in response to Mr K's application, given that a review was issued on 6 August 2019.

Appeal

Should either Mr K or the SPS 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.

Enforcement

If the SPS fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SPS has failed to comply. The Court has the right to inquire into the matter and may deal with the SPS as if it had committed a contempt of court.

Claire Stephen
Deputy Head of Enforcement

27 August 2019

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