

Decision Notice 166/2021

Accessing “prohibited” telephone numbers

The Applicant

Public authority: Scottish Prison Service

Case Ref: 202001161



Scottish Information
Commissioner

Summary

The SPS was asked how prisoners were able to call certain “prohibited” numbers on prison phones. The SPS provided some information to the Applicant. The Commissioner investigated and found that the SPS held no further information within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 8(1)(c) (Requesting information); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendices form part of this decision.

Background

1. On 8 July 2020, the Applicant made a request for information to the Scottish Prison Service (the SPS). The information requested is reproduced in Appendix 2.
2. The SPS responded on 14 August 2020. It stated that parts 1 and 2 of the request were asking for explanations rather than requesting recorded information. However, the SPS provided the Applicant with the relevant Governors and Managers Action Notices (GMAs) regarding Authorised Personal Communication Devices – 16A/20, 27A/20 and 31A/20. In respect of part 3 of the request, the SPS disclosed GMA 34A/20.
3. On 9 September 2020, the Applicant wrote to the SPS requesting a review of its decision. The Applicant sought a review in respect of parts 1 and 2 of his request. The Applicant stated that, although these parts of his request were asking for explanations, the SPS could have read as “*information as to the basis upon which...*” The Applicant also referred to the wording at the start of the request where the SPS was invited to provide information.
4. The SPS notified the Applicant of the outcome of its review on 26 September 2020. The SPS upheld its original response with modifications, explaining that the information provided in the initial response was in fact the relevant “basis” upon which prisoners at HMP Edinburgh could access the numbers specified by the Applicant in parts 1 and 2 of his request.
5. On 4 October 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the SPS’s review because he believed that further information falling within parts 1 and 2 of his request was held by the SPS.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 9 October 2020, the SPS was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
8. 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 to answer specific questions. These related to the searches it had carried out to ascertain whether any further information was held.

9. Both the SPS and the Applicant provided submissions to the investigating officer during the course of the investigation.
10. The SPS clarified the reason why prisoners were physically able to call telephone numbers which, by way of the prison's rules, they were prohibited from calling. The SPS explained that this was due to a technological issue, which had allowed such calls to go through and which had now been resolved. The SPS emphasised that, regardless of the technical issue, the numbers in question were prohibited by Prison Rules.
11. The investigating officer asked the SPS to search for any information that might be held, documenting the issue in question, as such information could fall within the scope of the request.
12. The SPS's searches on information relating to the telephone system issue produced three email conversations which were provided to the investigating officer. However, these emails had been created after the date of the Applicant's request and, therefore fell outside the scope of this application. The SPS submitted that, other than these emails, no further information was held.

Commissioner's analysis and findings

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

Validity of parts 1 and 2 of the request

14. In its initial response (14 August 2020), the SPS told the Applicant that it did not consider parts 1 and 2 of his request to be valid. It is not entirely clear from the notice issued to the Applicant on 26 September 2020 whether the SPS accepted, at review, that parts 1 and 2 of the Applicant's request were valid requests.
15. Section 8(1)(c) of FOISA states that, for a request to be valid, it must describe the recorded information being requested. Unless the request adequately describes the information (there is generally a low test for this), the request will not be valid.
16. In the Commissioner's view, parts 1 and 2 of the request sufficiently describe the recorded information the Applicant wants. The first line of the request makes it clear that the Applicant is seeking recorded information and the wording of parts 1 and 2 describe in sufficient detail the type of recorded information that is being sought. This was subsequently evidenced by the SPS's provision of information falling within scope of part 1 of the request to the Applicant on 14 August 2020.

Section 17(1) of FOISA

17. 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, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.

18. The SPS explained that prisoners were able to physically call any numbers (including prohibited ones) because of an issue occurring in the prison's telephone system.
19. The SPS stated that the phone system was enabled to restrict certain numbers, but, due to a technical issue in the phone system, which has since been addressed, there was a period when any number could be accessed. The SPS explained that most of the discussions around the issue were carried out verbally by telephone with BT and the three email conversations (mentioned above, which fall outwith the scope of the request) were all that was held in a recorded format.
20. The SPS informed the Commissioner that the problem was discovered when the prisoners' PAN lists (prisoners allocated numbers) were downloaded from the PIN system to upload to the mobile phone system. It was discovered that several prisoners in Edinburgh had 101 numbers on their PAN lists which should not have been the case. The ability to connect to 101 or 999 was due to an issue within the phone system. The implementation of the mobile phone system began on 16 July 2020 at HMP Edinburgh and subsequently the SPS became aware of the problem in the prison phone system.

The Commissioner's findings

21. The Commissioner has taken into account the arguments put to him by both the SPS and the Applicant. He is of the view that it is crucial to expectations of whether or not any information is held, to take account of when the issue was actually discovered.
22. The Commissioner notes the SPS's explanation that it only became aware of the issue in the phone system as a result of the implementation of the mobile phone system on 16 July 2020. If the SPS was not aware of the issue prior to that date, then it is highly unlikely that it would hold any information on the issue before the issue was actually identified. The date of the Applicant's information request was 8 July 2020, which was prior to the identification of the issue.
23. Having taken account of all the information before to him, and the circumstances as outlined above, the Commissioner is satisfied, on the balance of probabilities, that the SPS was correct to notify the Applicant, under section 17(1) of FOISA, that it held no further information at the time the Applicant made his information request.

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 the Applicant.

Appeal

Should either the Applicant 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.

Margaret Keyse
Head of Enforcement

19 October 2021

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.

...

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

(i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

Appendix 2: Information request

- (1) an explanation of the basis upon which prisoners at HMP Edinburgh were entitled to call:
 - (a) 'universal' numbers enabled for the whole prisoner population at HMP Edinburgh as of Friday 13 March 2020 (to include the list of 'universal' numbers enabled at that establishment on that date); and
 - (b) 'pre-approved numbers' ('PAN') listed for individual prisoners;
- (2) an explanation of the basis upon which prisoners at HMP Edinburgh were able to call any number on a prisoner PIN phone which had not been 'enabled' either on a 'universal' basis or on an individual basis as of Friday 13 March 2020;
- (3) all and any information held within documents created since 13 March 2020 explaining or referencing the apparently anomalous position according to which numbers such as that of Police Scotland ('101') or The Samaritans, previously enabled by the SPS for use by prisoners, could be regarded as 'prohibited' numbers in terms of the 2019 Direction.

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