

Decision Notice

Decision 219/2016: Mr John Cairney and the Scottish Prison Service

Anonymous letters received by the Scottish Prison Service:

Failure to respond within statutory timescales

Reference No: 201601767

Decision Date: 14 October 2016



Scottish Information
Commissioner

Summary

On 1 August 2016, Mr Cairney asked the Scottish Prison Service (the SPS) for information about anonymous letters it had received, broken down by pay grade, and any actions it had taken. This decision finds that the SPS failed to comply with Mr Cairney's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
1 August 2016	Mr Cairney made an information request to the SPS.
23 August 2016	The SPS responded to the information request.
23 August 2016	Mr Cairney wrote to the SPS requiring a review of its decision.
	Mr Cairney did not receive a response to his requirement for review.
28 September 2016	Mr Cairney wrote to the Commissioner's Office, stating that he was dissatisfied with the SPS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
3 October 2016	The SPS was notified in writing that an application had been received from Mr Cairney and was invited to comment on the application.
4 and 12 October 2016	The Commissioner received submissions from the SPS. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, the SPS acknowledged that it had failed to provide a response to Mr Cairney's requirement for review. It explained that it had contacted Mr Cairney on 29 September 2016 to apologise for this administrative failure and to seek clarification of his requirement for review, so it could provide him with a response. Mr Cairney responded to the request for clarification on 3 October 2016.
2. The SPS notified the Commissioner that a review response was issued to Mr Cairney on 12 October 2016. A copy was provided to the Commissioner.
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. 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 Cairney's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. As the SPS responded to Mr Cairney's requirement for review on 12 October 2016, the Commissioner does not require it to take any further action in relation to Mr Cairney's application.
6. The Commissioner notes that the SPS apologised in its review outcome for its failure to respond within 20 working days.

Decision

The Commissioner finds that the Scottish Prison Service (the 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 Cairney. In particular, the SPS failed to respond to Mr Cairney's requirement for review within the timescales laid down by sections 21(1) of FOISA.

The Commissioner does not require the SPS to take any action in respect of this failure, in response to Mr Cairney's application, given that it has now issued a review response.

Appeal

Should either Mr Cairney or the Scottish Prison Service 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.

Alison Davies
Deputy Head of Enforcement

14 October 2016

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