



Decision Notice 110/2024

Preparing life prisoners for parole

Authority: Scottish Prison Service
Case Ref: 202200921

Summary

The Applicant asked the Authority for all information in relation to the courses, processes and treatments offered to life prisoners to prepare them for parole. The Authority provided some information in relation to one part of the request, but said that the other parts of the request were substantially similar to a previous request made by the Applicant and therefore refused to provide the information (for the other parts of the request) to the Applicant, citing section 14(2) of FOISA.

The Commissioner investigated and did not agree that the request was repeated under the terms of section 14(2) of FOISA. He therefore required the Authority to carry out a review and respond again to the Applicant in terms other than those applied by section 14(2) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(2) (Vexatious or repeated requests), 16(1) (Refusal of request); 47(1) and (2) (Application for decision by Commissioner)

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

Background

1. On 20 March 2022, the Applicant made a request for information to the Authority. He asked for:

All information in relation to the courses, processes and treatments offered to life prisoners to prepare them for parole. He stated, "Without limiting my request, examples of information I seek include copies of material offered to prisoners." He explained that where third party proprietary rights prevent the disclosure of full copies of materials, he required a summary of the materials and its objectives. In particular, he requested;

- i) A copy of the "Progression Pathway", which is referred to in a letter from [the Authority] to me [date specified].
- ii) What evaluation is carried out of courses processes and treatments offered to life prisoners;
- iii) What changes to such courses, processes and treatments have been made following such evaluations;
- iv) What reports, if any, have been made to the Scottish Government about such evaluations; including seeking permission to change course content, or seeking funds to continue with courses; and
- v) What steps, if any, has [the Authority] taken to increase the percentage of life prisoners who are released on parole at first review stage.

The Applicant specified that the information should be provided from 1 April 2017 to the date of his request, broken down into financial years. He clarified that if someone began a course in 2017, and it was still running unchanged, the Authority should reply confirming that the course has been and continues to be made available in each of the years from 2017.

The Applicant advised the Authority that if it does not hold any information, it should confirm whether it has ever held such information or whether it is no longer held.

2. The Authority responded on 27 June 2022. In response to request (i), it provided the Applicant with a copy of (and a link providing access to) a document entitled "Risk Management, Progression and Temporary Release Guidance" which it referred to as "the Progression Pathway". The Authority notified the Applicant that it was refusing requests (ii) to (v) under section 14(2) of FOISA, as they were substantially similar to requests that the Applicant had previously made and that it had complied with, on 10 February 2021. The Authority stated; "in this case the information we hold is the same as at the time of your previous request. We have also considered the circumstances and have concluded that there has been no significant change".
3. On 28 June 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because the Authority had not supplied the information he had requested, it had not offered him any advice and assistance, it had not considered whether a reasonable amount of time had elapsed since his first request, and he did not accept that section 14(2) applied to request (ii) to (v).
4. The Authority notified the Applicant of the outcome of its review on 23 August 2022. The Authority upheld its original decision without modification.
5. On 23 August 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because it did not appear to him that the Authority had considered the grounds of his review submissions, nor given reasons for rejecting those grounds.

Investigation

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.
7. On 30 September 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

9. The Commissioner has considered all the submissions made to him by the Applicant and the Authority.

Section 14(2) – Repeated request

10. Under section 14(2) of FOISA, where an authority has complied with an information request, it is not obliged to comply with a subsequent request from the same person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
11. For section 14(2) to apply, therefore, the following need to be considered:
 - (i) whether the Applicant's previous request was identical or substantially similar to the request under consideration here;
 - (ii) whether the Authority complied with the previous request and, if so
 - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request.

Is the request identical or substantially similar to the previous request?

12. In its submissions to the Commissioner, the Authority argued that requests (ii) to (v) were identical to a previous request made by the Applicant on 8 January 2021 (the January request), which it had refused under section 12(1) of FOISA.
13. The phrasing of the Applicant's request of 8 January 2021 is below;

"I have enquired recently of the Scottish Government what monitoring is undertaken of the success rates of life sentence prisoners upon their first review stage of the parole process. The reply from Scottish Government indicates that [the Authority] may have such a role [details of letter – i.e. date, sender, job title, reference – specified].

I should therefore be grateful if you would supply the following information:

1. What evaluation is carried out of courses offered to life prisoners;
2. What changes to such courses have been made following such evaluations'
3. What reports, if any, have been made to the Scottish Government about such evaluations; including seeking permission to change course content or seeking funds to continue with courses; and

4. What steps, if any, has [the Authority] taken to increase the percentage of life prisoners who are released on parole at first review stage.

In all instances I ask that the information is provided from 1 April, 2015 to date, broken down into financial years. If you do not hold any information I should be grateful if you would confirm whether you have never held such information or whether it is no longer held.”

14. As noted above, in the request of 20 March 2022, the Applicant, asked for *all information in relation to the courses, processes and treatments offered to life sentence prisoners to prepare them for parole*” and he limited the request to information from 1 April 2017 to 20 March 2022.
15. There can be no doubt that the question numbered (iv) in the 20 March 2022 request is identical to the question numbered 3 in the Applicant’s previous request of 8 January 2021. Additionally, request (v) is virtually identical to request 4 in the January request (bar one minor typo), and there are substantial similarities, between the wording of requests (ii) and (iii) in this case, and requests 1 and 2 in the January request. However, in this current request, the Applicant specifically emphasised that he did not wish to limit the scope to the “*Progression Pathway*” document referred to, nor to the list of questions posed. On 20 March 2022, the Applicant asked for “...*all* information in relation to the courses, processes and treatments offered to life prisoners to prepare them for parole”. This is, by the use of the word “all” a wider request than the previous January request. The more recent request also asks for “copies of material offered to prisoners”, which the previous request did not.
16. Furthermore, as noted above, the time period for each request differs significantly. The January request asked for information between 1 April 2015 and 8 January 2021. The timescale of the information sought in the 20 March 2022 request was 1 April 2017 to 20 March 2022. Although the date range of information requested in each request is overlapping, it is different – in particular, the later request would encompass any information that was created after 8 January 2021 but before 20 March 2022, and held by the Authority on the date of the Applicant’s request. Similarly, the earlier request goes back further in timescale.
17. The Commissioner accepts that there are obvious similarities between both requests and he can appreciate why the Authority sought to refer to section 14(2) for aspects of the request. The question whether the new request is substantially similar to the original request is not an easy one. However, given that the Applicant clearly intended his March 2022 request to be read in whole and not limited to the examples given, and that a different timescale applies, on balance, it is the Commissioner’s view that the 20 March 2022 request cannot be said to be substantially similar to the 8 January 2021 request.

The Commissioners conclusions

18. Section 14(2) is discretionary, not mandatory. Even if a request looks to be repeated, there may be circumstances in which it is good practice for the Authority to comply with the request. They should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is repeated. Requesters must not be unjustly denied the opportunity to make a genuine information request.
19. On balance, the Commissioner is satisfied that although the subject matter of the two requests is the same (i.e. preparing life prisoners for parole), the actual information requested and the timescale covered by the requests are different, therefore, for the

purposes of FOISA, the requests are not identical, nor, in the Commissioner's view, are they substantially similar.

20. Furthermore, the Commissioner is not persuaded by the Authority that the information captured by the new request is not different from that previously held by the Authority nor that the circumstances of the information held remain the same. He considers that a reasonable time has passed between the date of the Applicant's original request on 8 January 2021, and his more recent request on 20 March 2022.
21. In these circumstances, the Commissioner finds that the Applicant's request of 20 March 2022, was not substantially similar to his request of 8 January 2021. Consequently, the Commissioner finds that section 14(2) of FOISA does not apply and the Authority failed to comply fully with Part 1 of FOISA in refusing the request on the basis that the request was repeated.

Decision

The Commissioner finds that the Authority failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant. He finds that the Authority was not entitled to apply section 14(2) of FOISA to the Applicant's request of 20 March 2022.

The Commissioner therefore requires the Authority to respond to the Applicant's request for information in line with the requirements of Part 1 of FOISA, other than in terms of section 14(2), by 15 July 2024.

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.

Enforcement

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

David Hamilton

Scottish Information Commissioner

31 May 2024

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- ...
- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a “refusal notice”) which-
 - (a) discloses that it holds, the information;
 - (b) states that it so claims;
 - (c) specifies the exemption in question; and
 - (d) states (if not otherwise apparent) why the exemption applies.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).