



Scottish Information
Commissioner
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Decision Notice 204/2025

Food menus at HMP Low Moss

Applicant: Anonymous

Authority: Scottish Prison Service

Case Ref: 202500564

Summary

The Applicant asked the Authority for menu selections offered to prisoners at HMP Low Moss between 16 March 2023 and 21 January 2025. The Authority disclosed information to the Applicant, but the Applicant believed the Authority held further information falling within the scope of his request. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position that it held no further information. He required the Authority to reconsider the Applicant's request, carry out fresh searches for the information requested and provide the Applicant with a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 21 January 2025, the Applicant made a request for information to the Authority. He asked for a copy of all menu selections offered to prisoners at HMP Low Moss from 16 March 2023 and 21 January 2025, together with such explanation as may be required to understand any code or abbreviation.
2. The Authority responded on 13 February 2025 and disclosed a number of menus to the Applicant.

3. On 19 February 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he believed the Authority held further information falling within the scope of his request.
4. The Authority notified the Applicant of the outcome of its review on 18 March 2025, which disclosed further information to the Applicant.
5. Following further correspondence from the Applicant after it had issued its review outcome, the Authority disclosed further information to the Applicant. It explained that the further information it had disclosed to the Applicant was all of the information found on a search of its SharePoint system. It noted that it had discussed the Applicant's request with the Unit Manager, who had interrogated the SharePoint system to go back through the "version history" to ascertain it held any further information. It also explained that once new menus are drawn up, these overwrite the old menus.
6. On 16 April 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review because he still did not believe that the Authority had provided him with all of the information falling within the scope of his request. He explained that he considered the Authority's explanation for why it did not hold any further information to be inconsistent with the information it had disclosed to him.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 12 May 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions relating to how it had established what information it held falling within the scope of the request.

Commissioner's analysis and findings

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

Whether the Authority holds any further information

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an

applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
14. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

The Applicant's submissions

15. The Applicant maintained that the Authority held further information falling within the scope of his request that it had not disclosed to him. While the Authority had disclosed further information to him after the date of its review outcome, he considered that it held further information, and he considered the Authority's explanation for why it did not hold any further information to be inconsistent with the information it had disclosed to him.
16. The Applicant noted that the Authority had said that when new menus were drawn up these overwrite the old menus. However, he said that if this were true then the Authority would not have been able to provide the extent of information to him that it had.
17. The Applicant also said that the Authority had not disclosed information to him "chronologically from a given date". He identified gaps in the information disclosed to him but said the Authority had not explained why that information was no longer available.

The Authority's submissions

18. To establish what information fell within the scope of the request, the Authority initially allocated the request to the Business Improvement Manager at HMP Low Moss. It said this staff member was experienced in dealing with FOI requests and responds to them for HMP Low Moss.
19. The Authority said that searches in response to the request were carried out by the Catering Manager at HMP Low Moss and the Unit Manager responsible for the Catering Department. Both employees carried out searches of their emails, H Drives (a network drive where users can store personal files) and the SharePoint site for HMP Low Moss. However, the Authority confirmed that no screenshots were available for these searches.
20. The Authority explained that the menus at HMP Low Moss were stored on the SharePoint site for HMP Low Moss. However, these menus were regularly overwritten as changes to the selections offered were made. The information disclosed to the Applicant in the Authority's initial response was therefore the information found at the time the initial searches were carried out.
21. The Authority allocated the Applicant's requirement for review to a Senior Manager to respond to. This employee had knowledge of how to interrogate "version history" documents held on SharePoint. With this more in-depth knowledge, the Senior Manager was able to locate and disclose to the Applicant further information falling within the scope of his request.

22. The Authority explained that it had done its best to provide the Applicant with as much information as possible falling within the scope of his request. However, it noted that “versions” on SharePoint may be deleted or not saved. It therefore considered that it had disclosed all of the information it held falling within the scope of the Applicant’s request.
23. The Authority noted that the information requested was not sensitive and that it would not have applied any exemptions under FOISA to prevent its disclosure. It reiterated that it considered it had done everything it could to provide the Applicant with all of the information it held falling within the scope of his request.

The Commissioner’s view

24. Having considered all relevant submissions and the terms of the request, the Commissioner is not satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any further recorded information (in addition to that already disclosed) that fell within the scope of the request.
25. In all cases where an applicant disputes whether an authority has identified all relevant information falling within the scope of their request, it falls to the authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold any further information. In this case, notwithstanding the opportunity given to provide comments, the Commissioner is not satisfied that the Authority has achieved this.
26. Where an authority has told a requester that it does not hold any further information, evidence of the authority’s searches will usually be a key consideration during the Commissioner’s investigation. As a minimum, authorities should be able to provide the Commissioner with the following information:
 - (i) details of the records or locations which were searched.
 - (ii) why these were the relevant records and locations.
 - (iii) the keywords used.
 - (iv) which staff were involved and why they were considered relevant.
 - (v) the outcome of the searches.
 - (vi) evidence that the searches have been carried out, including the outcome of the searches.
27. In this case, the Authority has not provided the Commissioner with adequate evidence of the searches it undertook in response to the Applicant’s request. Specifically, the Authority did not provide screenshots of the searches undertaken, nor did it detail the key terms used when carrying out these searches. Instead, the Authority only described the searches (in terms of the locations searched and those tasked with searching them).
28. The Commissioner accepts that the information requested is not sensitive and that if the Authority held further information falling within the scope of the request it would not seek to apply any exemptions under FOISA to prevent it from being disclosed. However, he must first be satisfied, on balance, that the Authority does not hold any further information.
29. In the circumstances, the Commissioner cannot uphold the Authority’s claim, based on the submissions it has provided, that it holds no further information falling within the scope of the request.

30. The Commissioner therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information requested, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA). In doing so, the Authority must:
- Have regard to the chronological gaps the Applicant believes exist. (If these gaps are not already apparent to the Authority, the Commissioner would suggest that it engage with the Applicant to determine what he considers them to be.)
 - Take adequate and proportionate steps to establish what information is held, using appropriate search terms and searching all locations and mediums where relevant information may be held.
 - Retain evidence of those searches in the event of a further appeal to the Commissioner.
31. As part of its revised review outcome, the Commissioner would also urge the Authority to consider providing the Applicant with evidence of the searches it has undertaken in order to assure him that they were adequate and proportionate. Doing so may obviate the need for a further appeal to the Commissioner, particularly if the Authority maintains (following further searches) that it does not hold any further information falling within the scope of the Applicant's request.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Specifically, the Commissioner finds that the Authority failed to satisfy him that it does not hold any further information (in addition to that disclosed already) relevant to the request. As a result, he finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by 13 October 2025. In doing so, he requires the Authority to have regard to the conditions set out in paragraphs 30 and 31 above.

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.

Euan McCulloch
Head of Enforcement

29 August 2025