

# Decision Notice



Decision 104/2012 Mr W and the Scottish Prison Service

MAPPa Guidance Manual

Reference No: 201200673  
Decision Date: 29 June 2012

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**Rosemary Agnew**  
Scottish Information Commissioner

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## Summary

Mr W requested from the Scottish Prison Service (the SPS) information contained within the MAPPA Guidance Manual (the Manual). The SPS responded by applying the exemption in section 25(1) of the Freedom of Information (Scotland) Act (FOISA) on the basis that the Manual was reasonably accessible to him without the need for an information request to be made for it under FOISA, via the prison library. Following a review, Mr W remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had dealt with Mr W's request for information in accordance with Part 1 of FOISA, by applying the exemption in section 25(1).

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(2)(a) (Effect of exemptions); 15 (Duty to provide advice and assistance); 25(1) (Information otherwise accessible)

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

## Background

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1. On 4 January 2012, Mr W requested from the SPS the information contained in the MAPPA Guidance Manual (the Manual).
2. The SPS responded on 3 February 2012, indicating that the Manual was available to Mr W from the prison library. It refused to supply the information on the grounds that it was exempt from disclosure under section 25(1) of FOISA, as it was reasonably accessible to him other than by making a request for information under FOISA.
3. On 17 February 2012, Mr W wrote to the SPS requesting a review of its decision. Mr W indicated that it was his understanding that this document was not allowed to be taken out of the prison library, that he only has 15 minutes per week to access the prison library, and that it is a disciplinary offence for a prisoner to have a writing implement in his or her possession outwith the residential area of the prison.



4. In the circumstances, he maintained that the information was not reasonably accessible to him, and so it was not exempt under section 25(1) of FOISA.
5. The SPS notified Mr W of the outcome of its review on 23 March 2012. In its response, the SPS sought to address each of the matters raised by Mr W in his requirement for review and upheld its decision to apply the exemption in section 25(1) of FOISA to the requested information.
6. On 9 April 2012, Mr W wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr W had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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8. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing, on 8 May 2012, that an application had been received from Mr W and that an investigation into the matter had commenced.
9. The Ministers were also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. The Ministers responded on 23 May 2012.
10. Subsequent references to submissions from the SPS are references to submissions made by the Ministers' Freedom of Information Unit on behalf of the SPS.
11. Mr W was invited to comment further on the matters raised by his application in the light of the comments received from the SPS. After receiving his response, further comments to address the points he raised were invited and received from the SPS.
12. The relevant submissions received from both the SPS and Mr W will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr W and the SPS and is satisfied that no matter of relevance has been overlooked.



## Section 25 – Information otherwise accessible

14. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
15. The key question to be considered in relation to Mr W's request is therefore whether the particular information he has requested is reasonably accessible to him.
16. The SPS has submitted that the Manual sought by Mr W is exempt from disclosure in terms of section 25(1) of FOISA, because it is held in the prison library and is therefore reasonably accessible to him, and any other prisoner who attends the library.
17. Mr W does not consider the information to be reasonably accessible, given his understanding that the Manual is not allowed to be taken out of the prison library, that he only has 15 minutes per week to access the prison library, and that it is a disciplinary offence for a prisoner to have a writing implement in his or her possession out with the residential area of the prison.
18. In this case, the circumstances surrounding the information requested changed in the period following Mr W's request. When responding to Mr W's request for review, the SPS advised him that, at the date of its initial response to his request, only one copy of the Manual was held in the prison library. However, it informed him that by the time of its response to his request for review, an additional copy had since been made available for short day lend.
19. Before considering the submissions from the parties, it is worth noting that, as in any case, the Commissioner must determine whether the SPS acted in compliance with Part 1 of FOISA at the point when it notified the applicant of the outcome of the review. In this case, that is 23 March 2012, by which point the relevant prison library had two copies of the relevant document, and so greater scope for making it available for consultation by prisoners.

### Is the information reasonably accessible to Mr W?

20. As noted above, Mr W has identified a number of reasons why he does not consider the information to be available to him through the prison library. Both parties have been given the opportunity to comment on these points, and to respond to each other's submissions.
21. The first consideration raised by Mr W is the limited time available for him to use the library. Mr W has indicated that this is limited to 15 minutes because he undertakes other activities during the first 30 minutes of the 45 minute period allocated for him to visit the library.



22. In response to this point, the SPS explained that a 45 minute slot on one day a week is allocated to all of the prisoners in the hall where Mr W resides to allow them to access the library. It acknowledged that Mr W does attend another activity at that time, but considered that it was down to his discretion as to whether he attend that other activity or go to the library. The SPS also noted that, when the other activity that Mr W attends is not on, or when he has not attended it, he has not attended the library. It also commented that it must be a question of priorities for Mr W whether he attends this other activity or visits the library to access the requested information.
23. In further submissions, Mr W has highlighted occasions where the library has not been open as advertised. In response, the SPS explained that this was due to unforeseeable staff absence and operational issues. Nonetheless, it again indicated that Mr W would be able to get access to the Manual on a short term lend.
24. The second issue raised by Mr W was that he considered that the option of a short day lend was not suitable for him because his access period finished at 15:30hrs, and the library closes at 16:00hrs.
25. In its initial comments on this point, the SPS explained that this action requires to be agreed with the librarian, and arrangements are made on an individual basis, depending on circumstances. The SPS also explained that arrangements for return of the Manual can be either through it being collected by the librarian or it being returned to the library by hall staff. The SPS also commented that, should Mr W wish to attend the library out with the time allocated to him, or require more access to the library, he can make a request via staff within the accommodation block to do so.
26. However, in response to these comments, Mr W advised that, when he had made a request, the librarian was unprepared to accommodate a short term lend of the Manual, and was unwilling to grant him additional time or access to the prison library.
27. After this point was raised with the SPS, it indicated (contrary to its previous response) that the librarian was unable to sanction the requests for a short term lend and additional access. The SPS explained that such an arrangement has to be made through hall staff, who will liaise with the librarian to facilitate a short term lend of the Manual. The SPS indicated that there is a protocol in place to do this and Mr W should follow this protocol. It indicated that staff in the relevant prison had confirmed that, to date, Mr W has not made a request in line with the protocol.
28. In other points, Mr W asserted that he has no other means open to him to obtain the Manual other than through his FOI request. The SPS rejected this point, maintaining that the information is available in the prison library and, in accordance with its publication scheme, he can request a photocopy of the document in part or whole and this will be considered. The SPS also explained that there is nothing precluding Mr W from taking notes or hand copying text from the document.



29. While the SPS acknowledged that prisoners are not permitted to carry items *en route* between the accommodation block and the prison library, it explained that pens and paper are available from the library.
30. Mr W responded on these points, indicating that music is played within the library which makes it difficult for him to concentrate or take notes from a document. Mr W also highlighted that he had already asked the SPS to provide him with a photocopy of the Manual, but his request was denied. He submitted also that the Manual had already been provided to other prisoners in the hall where he resides.
31. In response to these points, the SPS clarified that the facility to allow prisoners to obtain photocopies of a document is a discretionary facility, and on this occasion it was not considered to be necessary as the Manual is accessible through the library. It declined to comment further on Mr W's assertion that the document had been supplied to other prisoners, since he had supplied no evidence in relation to this point.

## Conclusions

32. The Commissioner recognises that Mr W does not consider that he has sufficient access to the Manual via the prison library, given the time limitations, the library environment and the constraints associated with that access.
33. While she understands that Mr W would prefer to receive a copy of the Manual to enable him to consult it at his convenience, she must focus on the question of whether it is reasonably accessible to him through existing arrangements.
34. Having considered the submissions from both Mr W and the SPS, considering the position at the time when the SPS notified Mr W of the outcome of its review, the Commissioner considers that there are options available for Mr W to access this information, such as; taking the Manual out for a short day lend, attending the library rather than other activities during the period allocated for its use, or requesting additional time to attend the library outside the allocated periods.
35. The Commissioner also considers that, contrary to the comments made by Mr W in his application, a short day lend would be an option that he could utilise, due to the opportunity to make an arrangement via hall staff with the librarian directly which would take account of his own circumstances.
36. The Commissioner therefore does not accept the contention of Mr W that he has no other means available to him to access the requested information other than through the FOI request he has made.
37. For these reasons, the Commissioner is satisfied that the information in the Manual is reasonably accessible to Mr W otherwise than through making an FOI request for it. Therefore the Commissioner accepts that the SPS complied with Part 1 and section 1(1) of FOISA in applying the exemption in section 25(1) of FOISA to the information requested by Mr W.



### Section 15(1)

38. In further submissions made during the course of the investigation, Mr W indicated that he considered that the SPS had failed to comply with section 15 of FOISA, as he did not receive any advice and assistance to identify where he could obtain the requested information from.
39. In response, the SPS indicated that Mr W was advised on 3 February 2012 that the Manual is available in the library but not (at that time) for lend. The SPS submitted that he was further informed on 23 March 2012 that a second copy of the Manual was now available for lend upon request through appropriate channels. Therefore, the SPS considered that it had complied with its statutory obligations under section 15 of FOISA.
40. The Commissioner has considered all of the submissions from both Mr W and the SPS, together with the responses to Mr W's request and requirement for review. Having done so, the Commissioner is satisfied that the SPS did provide reasonable advice and assistance to Mr W in response to both his request and requirement for review to assist him in identifying from where he could access the Manual, and the options available to him to do this.
41. The Commissioner is therefore satisfied that the SPS has complied with its duty under section 15 of FOISA in respect of Mr W's request.

### DECISION

The Commissioner finds that the Scottish Prison Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr W.

### Appeal

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Should either Mr W or the Scottish Prison Service wish to appeal this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**29 June 2012**



## Appendix

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### 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

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- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

##### 25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

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