



Scottish Information
Commissioner
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Decision Notice 108/2025

Whether information request was valid

Authority: Comhairle nan Eilean Siar

Case Ref: 202500126

Summary

The Applicant asked the Authority for information about the circumstances surrounding a presentation given to the Authority's Community Safety Board. The Authority refused to respond to the request because it did not consider it to be a valid request. The Commissioner investigated and found that whilst some of parts of the request were not requests for recorded information, other parts were and, therefore, those parts were valid requests for information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 8(1)(c) (Requesting information); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 18 September 2024, the Applicant made a request for information to the Authority. With reference to a presentation given to the Authority's Community Safety Board meeting on the same day, he asked
 - (i) Please confirm how and when Calum Steele came to be invited to address the committee and by whom? Was this at Calum Steele's request? If so, to whom and when did he make this request, and how was that request vetted before being accepted as a legitimate matter for presentation to the committee?

- (ii) Please detail which committee regulation (or standing order) permits such presentations to be made, please include the text of the regulations cited. I note that the committee was not asked to agree to suspend standing orders to enable Calum Steele to make his presentation.
- (iii) Calum Steele does not represent any formally constituted organisation, as far as the committee was publicly made aware of, anyway. Do private individuals have a right to address [the Authority] committees on matters of importance to themselves and/or to the committee? How does a private individual make such a proposal to give a presentation, and how are such requests vetted? Please, again, include the text of any regulation or policy cited.
- (iv) Please confirm if Calum Steele's fees / expenses for making this presentation were paid by [the Authority]? If so, how much in total was paid to Calum Steele?
- (v) If no fees or expenses were paid by [the Authority] for this presentation, is [the Authority] aware, or did it check, how Calum Steele's expenses were being covered and by whom?
- (vi) Was the content of Calum Steele's presentation formally vetted by any council member or staff member of [the Authority]? if so, under the terms of which process or policy?
- (vii) Was [the Authority] aware in advance that Calum Steele would use the presentation to openly criticise the spending decisions of other public bodies, and to make allegations about the conduct of such authorities that were not substantiated in his presentation? An example being that he described Police Scotland's purchase of a bullet-proof car as a 'vanity project'. Will those he attacked be invited to attend the committee and make a response?
- (viii) Can I ask if the matters raised by Calum Steele are within the remit of the Community Safety Board? If not, why was he allowed to proceed with his presentation when it became clear that they were not? I would describe the substantive purpose of his presentation to be a pre-election lobbying process for changes to the organisation of policing in Scotland. I understand that members of the committee might be interested in such matters, but are they within the committee's remit?
- (ix) Calum Steele raised the issue of the Scottish Parliamentary election scheduled for 2026, and suggested the committee and elected members 'organise now' and make representations for changes to the democratic representation on key Scotland-wide police organisational bodies. Is this lobbying, if [the Authority] accepts it as such, covered by any policy [the Authority] might have on providing access to elected members for lobbyists? Does [the Authority] have a policy on lobbying by outside interests / organisations? How was it applied in this case? I note that no proposal for [the Authority] or committee to contact Police Scotland or Scottish Government was forthcoming at the meeting.
- (x) Will other individuals or organisations opposed to Calum Steele's views be given the same access to committees and elected members prior to any elections?

2. The Authority did not respond to the request.

3. On 17 December 2024, the Applicant wrote to the Authority requesting a review of its failure to provide a response.

4. The Authority notified the Applicant of the outcome of its review on 16 January 2025 and apologised for its initial failure to respond to his request. The Authority explained that it did not consider that any of the questions were requests for recorded information but were, instead, seeking opinions. Given this, the Authority took the view that the request was not a valid request under FOISA. Notwithstanding, it provided some advice and assistance to the Applicant in relation to some of the questions he had raised in his request.
5. On 20 January 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of the Authority's review because he considered that his request was valid under FOISA and he has not been given the information he asked for.

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 4 February 2025, the Authority was notified in writing that the Applicant had made a valid application. 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 Authority was invited to comment on this application and to answer specific questions. These related to its reasons for concluding that the request was not valid and probing whether, or not, it might hold any recorded information which fell within scope of the request.

Commissioner's analysis and findings

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

Validity of the request

10. Section 8(1) of FOISA sets down the basic requirements for a valid request for information made in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested. The interpretation of section 8(1)(c) must be consistent with the overall aim of FOISA, which is to achieve openness with a minimum of formal requirements. Accordingly, the only requirement is that the description is clear enough to allow the information to be identified and located.
11. The purpose of requiring a description of the information is to allow the public authority to identify and locate the information requested.

The Applicant's comments

12. The Applicant submitted that the Authority, in informing him that his requests were not seeking recorded information but were seeking opinions, was incorrect. He argued that all of his requests were for factual information.
13. The Applicant noted that the Authority provided some advice in its review outcome which addressed some parts of his request and was factual, rather than opinion.

He considered that by providing some information by way of advice and assistance, the Authority had demonstrated that it did hold some information which fell within the scope of his request.

The Authority's comments

14. The Authority submitted that it did not consider the request to be a valid request for recorded information, and it noted the Commissioner's advice that "FOI law applies only to recorded information that the authority holds. Authorities are not required to create new information to respond to requests."¹
15. The Authority argued that all of the numbered questions in the original request, with the possible exception of the second part of request (iv), were requests for opinions or explanations, not for recorded information that existed at the time when the request was made. The Authority submitted that new information would have to be created in order to answer the request.
16. The Authority commented that this was not a case where it failed or refused to provide information in response to a valid request, rather, the request was not a valid one to begin with. The Authority stated that, had the Applicant asked for copies of correspondence, then it would have been considered differently.
17. The Authority noted that the request was undoubtedly a press enquiry. However, it argued that because the Applicant clearly intended his request to be handled under FOISA and addressed it to the Authority's FOI mailbox, the request was handled accordingly.
18. The Authority acknowledged its duty to provide reasonable advice and assistance to requesters and submitted that it had met that duty by advising him that his request was not valid and providing some information about the matter in question. The Authority noted that it had also advised the Applicant to make further enquiries to its Press Office.

The Commissioner's conclusions on the validity of the request

19. The Commissioner has considered both parties' submissions in this case fully. He has also considered the terms of the request, in the light of the requirements of section 8 of FOISA.
20. The Commissioner cannot agree with the Authority's approach in handling the Applicant's request, or its decision that all parts of the request sought explanations or opinions rather than recorded information. By the Authority's own admission, as discussed in paragraph 15, the Authority considered it possible that one part of the request (part (iv)) could be interpreted as a valid request for information.
21. Having considered all parts of the request, the Commissioner is satisfied that it is possible to discern a description of the information that the Applicant asked for in parts (i) to (vi) of his request. In each of these parts, the Applicant has sought information about the process and governance within the Authority regarding speakers addressing committee. This should have been clear to the Authority.
22. The Commissioner acknowledges that requests (vii) to (x) could be more difficult to understand in terms of describing the information that is sought.
23. In the first part of request (vii), the Applicant has asked about the Authority's view on the content of the presentation.

¹ <https://www.foi.scot/responding-requests>

The second part of request (vii) asks about future actions the Authority may, or may not, take in relation to the content of the presentation. The Commissioner is satisfied that asking for views and, in the circumstances of this case, asking what actions an Authority may, or may not take in future, does not relate to recorded information. Given that both parts of request (vii) are not requests for recorded information, the Commissioner agrees with the Authority and finds that request (vii) is not a valid request for information.

24. Request (viii) asks whether the matters raised in the presentation are within the remit of the Community Safety Board. The Commissioner acknowledges that the requester has sought an interpretation of the matters raised in the presentation against the remit of the committee, and he agrees with the Authority that a request which asks an authority to interpret or give an opinion on any matter is not a valid request under the terms of FOISA.
25. In the first part of request (ix), the Applicant asks the Authority for its view on whether a particular matter raised by speaker Calum Steele, could be described as lobbying. As previously discussed in this decision, it is long established that asking an authority for views or opinions does not constitute a request for information under the terms of FOISA. Consequently, the Commissioner is satisfied that the first part of request (ix) is not a valid request for information.
26. The second part of request (ix) asks whether the Authority has a policy on lobbying by outside interests or organisations, and goes on to ask how any such policy, if it exists, was applied in relation to the presentation given on 18 September 2024. Any reasonable interpretation of this would surely conclude that the requester is asking for such a policy, if it existed. Further, the Commissioner is satisfied that the Authority could have considered whether it held any information in relation to the application of any such policy, if it existed at the time of the request. The Commissioner is therefore satisfied that this part of request (ix) is a valid request for information.
27. In request (x), the Applicant asked the Authority about its interpretation of the presentation and any future actions in relation to invitations to present to committees and elected members in future. The Commissioner is satisfied that, in the circumstances of this particular case, this is unlikely to constitute a request for recorded information. He finds that request (x) is not a valid request for information.
28. For the reasons set out in the preceding paragraphs, the Commissioner is not satisfied that the Authority were justified in refusing to deal with any part of the Applicant's request because the Authority did not consider any part of the request as a valid request under the terms of FOISA.
29. The Commissioner notes the Authority's comments that it considered the request to be primarily a press enquiry, not a valid FOI request, and that it had advised the Applicant to make further enquiries to its Press Office. The Commissioner is concerned that the Authority has mishandled this request under FOISA (by wrongly concluding that it was invalid) because it considered the request to be essentially a press enquiry which should have been submitted to its Press Office.
30. The Commissioner would remind the Authority that section 1(1) of FOISA states that "A person who requests information from a Scottish public authority which holds it is entitled to be given it by that authority". While authorities may put processes in place to deal with "business as usual" requests or press enquiries, they cannot avoid their duties under section 1(1) of FOISA, and they cannot conclude that a request is invalid because they consider that it would more appropriately have been dealt with by their press office.

31. Consequently, the Commissioner finds that the Authority was obliged to respond to the request in terms of Part 1 of FOISA. He requires the Authority to reconsider requests (i) to (vi) (inclusive) and the second part of request (ix) (that is, Does [the Authority] have a policy on lobbying by outside interests / organisations? How was it applied in this case?) and to issue a new response to the Applicant's requirement for review in respect of the aforementioned parts of his request.

Decision

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

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to respond to requests (vii), (viii), (x) and to the first part of request (ix) because these requests were not valid requests for recorded information.

However, the Commissioner finds that by refusing to respond to requests (i) to (vi) (inclusive) and the second part of request (ix), the Authority failed to comply with Part 1 of FOISA.

The Commissioner therefore requires the Authority to consider requests (i) to (vi) (inclusive) and the second part of request (ix), and to issue a revised review outcome to the Applicant by **16 June 2025**.

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.

Jennifer Ross
Deputy Head of Enforcement

01 May 2025