



Scottish Information
Commissioner
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Decision Notice 126/2025

Information relates to Scottish Legal Aid Board policies.

Authority: Scottish Legal Aid Board

Case Ref: 202301356

Summary

The Applicant asked the Authority for information regarding its policies, procedures and guidance on making decisions to award legal aid. The Authority refused to provide the information on the basis that it was publicly available. The Commissioner investigated and found that the Authority failed to comply with Part 1 FOISA. He required the Authority to reconsider the request and provide the Applicant with a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 21(1) Review by Scottish public authority); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 17 September 2023, the Applicant made a request for information to the Authority. He requested,

“...information regarding your policies procedures and guidance on making decisions to award legal aid. More specifically, how you would do a risk assessment when a decision to award is likely to have an impact on the opponent’s statutory rights and how you would ensure that opponents are not exposed to unnecessary and vexatious litigation.”

2. The Authority responded on 6 October 2023.

It informed the Applicant that all of the information regarding its approach to applications for

legal aid could be found within the [guidance](#)¹ section of its website, and it confirmed that it was withholding this information under section 25(1) FOISA, on the grounds that it was otherwise accessible to him via its publication scheme.

3. On 11 October 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant expressed dissatisfaction with the Authority's response, arguing that the information on its website only outlined the requirements for applicants and solicitors, it did not, as far as he could see, detail how it assessed reasonableness and probable cause.
4. The Authority notified the applicant of the outcome of its review on 20 October 2023. The Authority upheld its original decision in full.
5. On 30 October 2023, 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 Authority's response, because the information published on its website did not explain how it made assessments.

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 22 November 2023, 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 of the submissions made to him by the Applicant and the Authority.

Section 25(1) – Information otherwise accessible

10. Information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA. Section 25(1) is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.
11. In its review outcome, the Authority stated that "...the only material we hold within your specification is the material published on the website". It upheld that the exemption in section 25(1) had been properly applied.

The Authority's comments

12. In its submissions, the Authority disputed the validity of the application. It did not consider that the Applicant's concerns were a matter for the Commissioner, arguing that he seemed dissatisfied with the content of the information rather than the process of obtaining it.

¹ <https://www.slab.org.uk/solicitors/legal-aid-guidance/>

13. The Authority provided background context regarding Applicant's ongoing interactions with the Authority.
14. The Authority suggested that the Applicant's use of the words "more specifically" clearly aligned the words which followed to the information request, and it interpreted and progressed the request on that basis. However, it argued that if the words "more specifically" were omitted from the request, then the remaining words could be interpreted as double or loaded questions, which the Authority has previously indicated it would not be drawn into answering.
15. The Authority submitted that it was not clear why the Applicant was dissatisfied with its review outcome. It noted that, in simple terms, the Applicant had asked for information, the Authority had notified him that all relevant information was published on its website, and it provided him with the link. The Applicant then commented that he had viewed the information but it did not tell him what he wanted to know, i.e. he has the information, but it does not serve his purpose.
16. The Authority noted that by directing the Applicant to the published information on its website, it had furnished him with the information he had requested.
17. The Authority submitted that it had previously contacted the Commissioner's office to clarify how to best provide the Applicant with the relevant information, and it was determined that a link to the published material would suffice.
18. The Authority argued that just as a requester's purposes are irrelevant to the public authority to whom an information request has been sent, they also cannot be a relevant consideration as to whether or not the public authority has fulfilled the request.
19. The Authority suggested that the Applicant may be conflating an information request with a desire to cross-examine the Authority, using the information request to further his grievances rather than seeking straightforward information.
20. It emphasised that the Commissioner must determine whether Applicant's inquiries fall within the scope of an information request or if they are attempts at cross-examination, which would not engage the Commissioner.
21. The Authority contended that if the Commissioner was satisfied that the application was valid then it maintained its reliance on section 25(1) of FOISA. It noted that it directed the Applicant to the information and the Applicant confirmed that he had viewed it. It submitted that the material published on its website was all the information it held and it did not hold anything further.

The Applicant's comments

22. In his application to the Commissioner, the Applicant reiterated his dissatisfaction with the Authority's response, maintaining that the website link, provided by the Authority, did not contain the specific information he had requested. The Applicant argued that the website's content offered only general guidance for applicants and solicitors, failing to detail the Authority's procedures for assessing reasonableness, probable cause, and the likelihood of success.

The Commissioner's conclusions

23. The Commissioner has considered the wording of the request together with the information available via the weblinks that the Authority provided to the Applicant. He has also considered the Authority's arguments on the validity of the application. The Commissioner is satisfied that the Applicant made a valid request for information, and he expressed dissatisfaction with the Authority's response to his request and requirement for review, in his application.
24. In short, the Commissioner considers that the application complies with section 47(2) of FOISA and he has the power to carry out an investigation. He rejects the Authority's view that the request was not valid.
25. The Commissioner acknowledges that the Applicant has been in dispute with the Authority over a number of years and that the Authority is concerned that the request in this case was not a genuine request for recorded information, but was an attempt, by the Applicant, to extend lines of enquiry to further his grievance with the Authority.
26. It is clear, from the context and background information pertaining to the Applicant's interactions with the Authority, that the Applicant is dissatisfied with how the Authority has discharged its functions and he has been engaged in correspondence with the Authority in relation to this. The Commissioner considers that this current information request is a further attempt by the Applicant to obtain information to help him understand how the Authority reached a decision in matters that had a negative impact on his life.
27. As noted above, in this case, the Applicant requested,

"...information regarding your policies procedures and guidance on making decisions to award legal aid. More specifically how you would do a risk assessment when a decision to award is likely to have an impact on the opponent's statutory rights and how you would ensure that opponents are not exposed to unnecessary and vexatious litigation."
28. The Commissioner understands this to mean that the Applicant is looking for any guidance or procedures that the Authority holds in relation to how it carries out risk assessments prior to awarding legal aid. He wants to know how the Authority assesses the impact that the awarding of legal aid might have on the opponent of any legal action. For example, if a husband is granted legal aid to raise a legal action against his wife, what processes does the Authority have in place to ensure that the wife is not exposed to unnecessary litigation, as a result of the award of legal aid.
29. The Commissioner has reviewed the [weblink](#)² that the Authority directed the Applicant to and he notes that it is not a link to a single document, but rather it is a link to a webpage aimed at solicitors and legal aid professionals. It has many links and is organised by aid type (such as civil guidance or criminal guidance). In its response to the Applicant, the Authority commented that the Applicant's previous queries had related to civil legal aid, and it directed him to the topic entitled "[civil guidance](#)"³. The Commissioner clicked on the "civil guidance" link and he was taken to another page which contained many documents under various sub-headings, such as "financial assessments", which themselves open up into lists of multiple documents.

² <https://www.slab.org.uk/solicitors/legal-aid-guidance/>

³ <https://www.slab.org.uk/solicitors/legal-aid-guidance/civil-guidance/>

30. There is no doubt that the Authority's website contains a lot of guidance to the public, but the Commissioner could not see any obvious policies or guidance which set out how the Authority conducts or carries out the risk assessments described by the Applicant. In order for him to locate the information requested by the Application, the Commissioner would need to spend a significant amount of time, clicking and reviewing each document to try and find anything that was relevant.
31. In previous decisions, the Commissioner has found that Authorities cannot simply direct Applicants to document-heavy websites and expect them to rake through all of the information to find what they want. The Commissioner acknowledges that the Authority did refer the Applicant to the "[civil guidance](#)"⁴ part of its website, but as noted above, this part of the site still contains many links and many documents, and it would require an excessive amount of time for an external party (such as the requester) to review them all and locate the information he was seeking, if indeed that information exists.
32. The Commissioner also notes that on the "legal aid guidance" part of the website, it states that if individuals cannot find the guidance they are looking for, they should email the Authority with the details and they will help. It appears to the Commissioner that the Applicant has followed those instructions, and the help offered to him has simply been a referral back to the main website.
33. In order for an Authority to rely on section 25(1) of FOISA, the information must be information that the requester can "reasonably obtain" other than by requesting it under section 1(1) of FOISA. The Commissioner does not consider the approach recommended by the Authority (a document by document trawl of an information heavy website) to meet this requirement, and he is not satisfied that the information is published on its website.
34. The Authority has submitted that it contacted the Commissioner's office to seek guidance on whether it could simply refer the Applicant to a weblink in response to an information request. The Commissioner would note that his enquiry service can only give advice based on the information that is provided during that enquiry (and in any case, given the possibility of appeal to the Commissioner in relation to the subject matter of the enquiry, that advice can only ever be in general terms). If an Authority states that it has information published on its website that fulfils a request and asks if it is sufficient to provide the requester with a weblink to this information, then his office will confirm that a link does, indeed, appear to be suitable. However, at the point that the enquiry is made, the Commissioner has not seen any of the key documents in the case nor has he reached a view on whether the information requested is actually published on the website. His guidance is very much based on the information given to him by the enquirer.
35. Having reviewed the titles of the documents listed on the website, the Commissioner considers it possible that the Authority does not hold the specific information requested by the Applicant. If this is the case, section 17(1) requires that the Authority should have notified the Applicant that the information was not held.
36. In its submissions to the Commissioner, the Authority commented that:
- "We know what we hold. We know that the material is all published. We do not hold anything further, and we know that we do not hold anything further".

⁴ <https://www.slab.org.uk/solicitors/legal-aid-guidance/civil-guidance/>

37. If the Authority knows what it holds, then it should have directed the Applicant to the precise information he requested and not to a general document store. The above comments appear to suggest that the Authority acknowledges that it might not hold the specific information requested by the Applicant
38. The Commissioner requires the Authority to carry out fresh searches for the information requested by the Applicant and to provide him with a revised review outcome.
39. If the Authority still considers that the information requested by the Applicant is published on its website (and is exempt under section 25(1) of FOISA) it must direct the Applicant to the specific part or parts of any documents that contain the information he has requested. In the circumstances, it may be more helpful to the Applicant if it simply provides him with a copy of this information.
40. If, as a result of its searches, the Authority determines that it does not hold the specific information requested by the Applicant, it must give him notice, in terms of section 17(1) of FOISA, of this fact.

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 by failing to take adequate steps to identify, locate and provide the information falling within the scope of the request, the Authority failed to comply with section 1(1) of FOISA.

Furthermore, the Commissioner is not satisfied, for the reasons set out above, that the Authority was entitled to rely on section 25(1) of FOISA in responding to the request.

The Commissioner therefore requires the Authority to engage with the Applicant and 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 07 July 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.

Euan McCulloch
Head of Enforcement

23 May 2025