



Scottish Information
Commissioner
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Decision Notice 155/2025

Handling of an information request relating to two policies

Authority: General Teaching Council for Scotland
Case Ref: 202401617

Summary

The Applicant asked the Authority for information relating to a review of its Unacceptable Behaviour and Actions Policy (UAP) and its complaint handling policy. The Authority provided some information to the Applicant and withheld some information. The Commissioner investigated and found that the Authority had applied exemptions to information which it later accepted was not held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 15 (Duty to provide advice and assistance); 17(1) (Information not held); 21(1) Review by Scottish public authority; 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 10 September 2024, the Applicant made a request for information to the Authority. He asked for:
 - (i) Copies of all correspondence seeking advice on the publication of FOI review requirement applications or review responses, and all responses received
 - (ii) Information relating to the Authority's Unacceptable Actions Policy (UAP) and complaint handling arrangements (which would demonstrate that a previous commitment to review these policies had been acted upon).

2. The Authority responded on 8 October 2024 and withheld information in relation to request (ii) under sections 30(b)(i) and (ii), and 30(c) (Prejudice to the effective conduct of public affairs), and 38(1)(b) (Personal data) of FOISA. It did not respond to request (i).
3. On 8 October 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority's response to request (ii) because he was looking for information which would demonstrate that the Authority's commitment to review these policies had been acted upon. The Applicant was dissatisfied that this information had not been disclosed.
4. On 18 October 2024, in addition to his original requirement for review of 8 October 2024, the Applicant submitted a second requirement for review in relation to his original request, in which he stated that he was dissatisfied because he believed the Authority had incorrectly applied the exemptions.
5. The Authority notified the Applicant of the outcome of its review on 6 November 2024, and it apologised that the review outcome was issued a day late. The Authority maintained that it had been correct to withhold most of the information under sections 30(b)(i) and (ii), 30(c) and 38(1)(b) of FOISA, but it disclosed some information to the Applicant, with information redacted under 30(b)(ii) and 38(1)(b) of FOISA.

Further correspondence between the Authority and the Applicant

6. The Applicant responded to this review outcome later that same day (on 6 November 2024 at 20:36). He stated that the response was helpful in providing evidence that the complaints process had been worked on. However, the Applicant commented that he had not been provided with information regarding the UAP, although the Authority in its response said it had identified various email exchanges between colleagues regarding the development of both procedures (the complaints policy and the UAP). He asked the Authority to clarify whether it was retracting its claim that emails regarding the development of the UAP existed or, if they did exist, whether the whole text of those emails was being withheld under an exemption.
7. The Authority responded to this request for clarification on 8 November 2024 at 09:35. It stated that no retraction was necessary and that there were no separate emails specifically concerning the UAP because both policies were being reviewed under the umbrella term of "complaints process" due to their interlinked nature.
8. Later that morning (on 8 November 2024), the Applicant asked the Authority to send him any information which demonstrated the development of the UAP. He stated that there were clearly two different policies at present and that the information disclosed to him demonstrated the development of only one – the complaints policy. The Applicant asked the Authority to issue a section 17 (Information not held) notice under FOISA if there was no information demonstrating the development of the UAP, and to make it clear if all information demonstrating that development was covered by an exemption.
9. On 13 November 2024, the Applicant emailed the Authority asking for a clear response to the points he had raised by the end of the week, to avoid a referral to the Commissioner.

He attached to this email a letter sent by the Commissioner's office to the Authority in relation to a separate appeal which the Applicant had made, which referred to [the Commissioner's guidance on section 15\(1\) of FOISA](#)¹. This reminded authorities of the duty, under section 15 of FOISA, to offer advice and assistance at every stage of an information request. The Authority did not immediately respond to this email.

10. The Applicant made an initial application to the Commissioner on 21 November 2024, expressing dissatisfaction with the Authority's blanket application of exemptions and its handling of his request, particularly in relation to its failure to give him notice that it did not hold any information regarding a review of the UAP.
11. The Authority responded to the Applicant's second requirement for review on 22 November 2024. (The Applicant has described this email of 22 November 2024 as a second review outcome; the Authority disagreed, describing the email as supplementary information to its review outcome.)
12. In this response, the Authority apologised for not following up on the Applicant's second requirement for review sooner. It stated that his email of 18 October 2024 had been overlooked because the Authority had already provided a review outcome in response to his first requirement for review (of 8 October 2024) and the Applicant had subsequently sent further emails as a result of that review outcome.
13. The Authority noted that the Applicant had since sought further clarification concerning the development of the UAP. The Authority explained that, because of the progressing nature of the work, its thinking about what would best suit its requirements was still developing and this was why – despite the fact that its review encompassed consideration of both complaints and unacceptable actions – there was no recorded information in the searches it had carried out which directly referenced the UAP.
14. The Authority further advised the Applicant that it now accepted (given no recorded information directly referenced the UAP) that he was correct to suggest that the most appropriate response in relation to the UAP was to apply section 17(1) of FOISA.
15. After receiving the 22 November 2024 email from the Authority, the Applicant withdrew his original appeal to the Commissioner.
16. On 10 December 2024, 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 because blanket exemptions had been applied to whole documents and he was also dissatisfied with the Authority's handling of his request.

Investigation

17. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
18. On 16 December 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was allocated to an investigating officer.

¹ <https://www.foi.scot/providing-advice-and-assistance>

19. 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 searches, the exemptions the Authority was applying and the Authority's handling of the request.

Commissioner's analysis and findings

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

Scope of the investigation

21. On 7 March 2025, the Applicant narrowed the scope of the dissatisfaction set out in his application. He submitted that he was no longer interested in seeing the withheld information and he withdrew his dissatisfaction regarding that part of his appeal. He submitted that he still wanted the Commissioner to investigate his remaining areas of dissatisfaction, regarding:
- (i) The Authority's failure to give him notice, under section 17 of FOISA, that it held no information regarding its commitment to review the UAP
 - (ii) The Authority's late response to his requirement for review
 - (iii) Inconsistency in the Authority's responses, meaning they were unclear
 - (iv) The Authority's failure, under section 15 of FOISA, to provide the reasonable clarification he was requesting
22. As a result, the Commissioner will not consider the Authority's reliance on exemptions in this decision, he will only consider the dissatisfaction set out above in paragraph 21.

Section 1(1) – General entitlement

23. 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.
24. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. 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.

The Authority's change of position

25. During the investigation, the Authority confirmed to the Commissioner what it had already indicated to the Applicant in its email of 22 November 2024, which was that it was now applying section 17(1) of FOISA to the part of the request relating to the UAP.
26. The Authority submitted that it had found no information within scope of the request which related specifically to the UAP.

The Authority stated that both policies were being considered together as a programme of work and for that reason the initial response referred to emails recovered as referring to both policies. However, it stated that, having reviewed this, it realised that direct reference had only been made to the complaints policy, and not to the UAP.

27. The Authority accepted that its initial response had not been clear on this point and it noted that it would consider this for further learning. However, the Authority submitted that it had been open and transparent in its explanation of what was intended and how the confusion arose.
28. Given its change of position, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA because it failed to give the Applicant notice, under section 17(1) of FOISA, that it did not hold information regarding a review of the UAP; and that it was not entitled to apply sections 30(b)(i) and (ii), and 30(c) (Prejudice to the effective conduct of public affairs), and 38(1)(b) (Personal data) of FOISA to information which it later accepted it did not hold.

The Authority's handling of the request

29. Section 21(1) of FOISA gives authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for review.
30. The Applicant has confirmed that he was dissatisfied that the Authority's response to his requirement for review was one day late. The Commissioner notes the Authority's explanation that this was caused by sudden and unexpected staff absence at a time of considerable demand on its small information governance team. (The Authority also stated that it had addressed resourcing to ensure additional support was available within the team to meet increasing demand.)
31. The Commissioner must find that the Authority breached section 21(1) in failing to respond within the statutory timescale and he would remind the Authority of its obligation to respond to requests and requirements for review within the prescribed timetables. This failure has been recorded in the Commissioner's case management system in line with his interventions procedures.
32. The Applicant has also expressed dissatisfaction with the inconsistency of the Authority's responses, and he has argued that this inconsistency rendered them unclear. The Authority has acknowledged that its initial response referred to how both policies (Complaints and UAP) were being considered together and for that reason the response made reference to emails which referred to both policies. The Authority subsequently confirmed that direct reference was only ever made to the complaints policy and not the UAP. The Authority has recognised that its original response was not clear and it has commented that it intends to reflect on this for future learning.
33. The Commissioner must acknowledge the Applicant's dissatisfaction on this point. The original response suggests that the Authority was withholding information relating to its review of its complaint handling and its UAP. Furthermore, in its review outcome of 6 November 2024, the Authority stated:

"I note that in his original response our information governance officer withheld the records that his search had identified in their entirety on the basis of the exemptions that he applied

(corresponding to your clarification above).

Having reviewed his response and the records that were identified, I am of the view that it was correct that my colleague withheld much of the documentation in its entirety due to the ongoing nature of this work...”

34. This clearly suggests that the Authority confirmed the original response only after reviewing “the records that were identified”. And yet, it later stated, in its correspondence of 22 November 2024, that:

“...there is no recorded information in the search we carried out directly referencing the Unacceptable Actions Policy.”

35. The Authority has acknowledged that its original response was not clear, but the Commissioner would add that the review outcome of 6 November 2024 was also unclear, as it suggested that information about the UAP was held, when it was not.
36. The Commissioner would remind authorities that they should take care when responding to information requests and ensure that when they are applying exemptions to information, that it falls within the scope of the request. The Commissioner would also remind authorities to ensure that their responses and review outcomes are clear and unambiguous, in order to aid the Applicant’s understanding. Such clarity of communication, even if not a specific requirement of Part 1 of FOISA, is undoubtedly good practice and – as in any process of this kind – a key element of enabling the public to exercise their rights effectively.

Section 15(1) – Duty to provide advice and assistance

37. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice and assistance in a particular case) it conforms with [the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information \(Scotland\) Regulations 2004 \(the Section 60 Code\)](#)².

The Applicant’s comments

38. The Applicant submitted that it was reasonable for him to seek clarification about aspects of the Authority’s position which he considered to be inconsistent (that is, its position in relation to whether section 17 (Information not held) of FOISA should have been applied to part of the request).
39. The Applicant further commented that he asked for clarification on 8 November 2024, received no response and sent a reminder on 13 November 2024, and that he did not receive an acknowledgement to either the original request for clarification or the reminder.
40. The Applicant also referenced an email that the Authority had sent to the Commissioner’s office on 14 November 2024 (copied to the Applicant) which was sent in relation to clarification regarding a different request. In this email, the Authority commented that it took the duty to offer advice and assistance very seriously. However, the Authority also stated

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

that it believed the statutory process was there to provide a formal structure to enable a line to be drawn and to ensure individual requests did not dominate the limited resources it had to meet its wider FOI obligations.

41. The Applicant commented that it appeared that the Authority did not agree that there was a need to provide clarifications and that the current failure to respond was “purposeful”.
42. The Applicant argued that the Authority only issued its email of 22 November 2024 after he had appealed to the Commissioner and commented that, he did not believe that the Authority intended to respond to his request for clarification and did so only because he had appealed.

The Authority’s comments

43. The Authority stated that it did not agree with the Applicant’s view that it had issued him with an updated review outcome. It considered that it had issued one review outcome and subsequent supplementary information.
44. It argued that the Applicant had submitted two separate requirements for review in relation to one response, 10 days apart. The Authority submitted that it had responded to the first requirement for review, which was dated 8 October 2024, with a review outcome on 6 November 2024. It stated that as part of that response it had included information which was dated beyond the initial request (and was therefore outwith the scope of the request) and that it had done this to assist the Applicant.
45. The Authority stated that the second requirement for review, received on 18 October 2024, made no reference to the first request for review and specifically referred to the way in which exemptions were applied in the initial response.
46. The Authority explained that its reply dated 22 November 2024 to the second review request was not a review outcome, because it had already provided one (which, the Authority argued, in any case had already addressed the points raised in the second requirement for review). It stated that this email was not intended to correct or replace the previous review outcome and that this was made clear to the Applicant. In fact, it stated that this reply had been provided in order to assist the Applicant, as it did not consider it had a legal obligation under section 21 to provide a response, as the process had been completed (i.e. its legal obligations had been fulfilled) by the review outcome (of 6 November 2024).
47. The Authority stated that its response of 22 November 2024 was not provided as a result of the Applicant making an appeal to the Commissioner. However, it acknowledged that its correspondence with the Commissioner’s office had reminded the Authority of its duties under section 15, and that had been a factor in providing the supplementary response.
48. The Authority considered that it had met its obligations under section 15 of FOISA. It commented that it had acknowledged and responded to the initial request within the 20 working days. Furthermore, it stated that in relation to the first review request it had apologised for being a day late in responding and had provided three documents to the Applicant. The Authority submitted that it strived to meet the requests from the Applicant within the statutory time frames and it treated each request based on its merits.
49. The Authority noted that it provided a response to the Applicant’s initial review request on 6 November 2024 and responded to a follow-up request for clarification on 8 November 2024 in relation to the application of section 17(1) of FOISA. The Authority stated that it had been mindful of correspondence with the Commissioner’s office about its duties under section 15 when providing this supplementary response.

50. The Authority submitted that it did not consider that it failed to provide reasonable advice and assistance under section 15 in the form of clarification. It argued that once it was made aware of the Applicant's desire to receive separate responses in relation to the two separate policies, it provided a full explanation of the two being dealt with as a programme of work.

The Commissioner's view on section 15

51. Firstly, the Commissioner notes that applicants can only make one requirement for review in relation to any information request and there is no provision under FOISA for more than one. The Commissioner's view is, therefore, that the Authority fulfilled its obligations in terms of providing the review outcome of 6 November 2024 (although, as he notes above, and as the Authority has accepted, this was issued a day late).
52. The Commissioner has also carefully considered the correspondence between the Applicant and the Authority relating to this appeal. The Applicant submitted that it was reasonable to ask for clarification, that he did so on 8 November 2024, and that the Authority did not respond. The Applicant further submitted that he sent a reminder on 13 November 2024 and that he did not receive an acknowledgement to either the original request for clarification or the reminder.
53. The Commissioner fully accepts that it is reasonable for this (or any) applicant to seek clarification on any aspect of an authority's response which that applicant believes to be unclear. However, the Commissioner notes that the Applicant first made a request for clarification at 20:36 on 6 November 2024 and that the Authority responded to this at 09:35 on 8 November 2024. The Applicant then sent a further email on 8 November 2024 as detailed above.
54. The Commissioner does not accept that the Authority failed to respond to the Applicant's request for clarification. It responded early on the second working day after the Applicant asked for this clarification. While the response was brief, the Commissioner considers that it clarified the Authority's position as it was at that time (albeit that the Applicant may have disagreed with that position and the Authority subsequently altered its position). The Commissioner's view is that the Authority responded to the point of clarification raised by the Applicant in his email of 6 November 2024, (which was whether the Authority considered a retraction was necessary; the Authority clarified that it did not believe it was).
55. The Applicant then sent a further email to the Authority on 8 November 2022. The Commissioner notes that in this email the Applicant did not ask for clarification, he asked for "evidence of what you have told me". The Commissioner considers that there is a difference between asking for clarification when an Authority's response is unclear and subsequently disagreeing with that clarification (which, of course, an Applicant is entitled to do).
56. The Applicant sent another email on 13 November 2024 asking for a response to his 8 November 2024 email in terms of clarification.
57. While the Applicant expressed dissatisfaction that the Authority did not then respond to him until 22 November 2024, the Commissioner notes that there is no requirement under FOISA to acknowledge a request for clarification, although authorities may have their own policies on customer service which might result in an acknowledgement being issued.
58. He also notes that when the Authority did respond, it was to inform the Applicant that it accepted he was correct to suggest that the Authority should have applied section 17 to the UAP part of the request (i.e. that it now agreed with the Applicant).

59. He considers that the Authority's responses to the Applicant appear to be broadly compliant with the statutory requirements in procedural terms and notes that he has been provided with no evidence that the Authority deliberately delayed responding to the Applicant's email of 8 November 2024.
60. He considers that it was not unreasonable for the Authority to take some time to consider the Applicant's arguments and reasoning in relation to section 17(1) of FOISA, in light of the clarification it had previously provided to him, and to review its own position in relation to those arguments.
61. Given all of the above, and having considered all of the submissions made, the Commissioner does not, on balance, accept that the Authority failed to comply with section 15 (Duty to provide advice and assistance) of FOISA.

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 by applying exemptions to information which the Authority later accepted was not held, and by failing to give notice in terms of section 17(1) of FOISA that it did not hold recorded information about a review of the UAP, the Authority failed to comply with Part 1 (and in particular section 1(1)) of FOISA.

The Commissioner also finds that the Authority failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA which gives authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for review.

However, the Commissioner finds that the Authority met the requirements of section 15 (Duty to provide advice and assistance).

Given that the Authority responded to the Applicant's requirement for review and has since clarified its position on section 17(1) of FOISA, the Commissioner does not require the Authority to take any action in respect of these failures.

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.

Euan McCulloch
Head of Enforcement

23 June 2025