



Scottish Information  
Commissioner  
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# Decision Notice 163/2025

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## Location of all-terrain fire vehicles for deployment in north of Scotland

Authority: Scottish Fire and Rescue Service (SFRS)  
Case Ref: 202401319

### Summary

The Applicant asked the Authority for information about where all-terrain vehicles were kept for deployment to particular locations. The Authority refused to provide the information requested on the basis that it was publicly available. The Commissioner investigated and found that the Authority had failed to comply with FOISA in responding to the request.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 15(1) and (2); 25(1) (Information otherwise accessible); 27(1) (Information intended for future publication); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 17 April 2024, the Applicant made a request for information to the Authority. He asked:  
“Where are SFRS all-terrain vehicles (ATVs) kept for deployment on the North Coast (A836 corridor), to Reay, Melvich, Strathy, Armadale and Bettyhill?”
2. The Authority sent an acknowledgement on 18 April 2024 but did not respond to the Applicant's information request.

3. On 17 May 2024, the Applicant wrote to the Authority, requesting a review of its failure to respond to his information request.
4. The Applicant did not receive a response to his requirement for review and he appealed to the Commissioner who, on 14 August 2024, issued [Decision 166/2024](#)<sup>1</sup> in relation to the Authority's failure to respond.
5. On 26 June 2024 (during the Commissioner's investigation into the Authority's failure to respond) the Authority notified the Applicant of the outcome of its review. The Authority apologised for its late response and provided the Applicant with three links to information available online. The Authority also informed the Applicant that the requested information was exempt under sections 25(1) (Information otherwise accessible) and 27(1)(a)(i) (Information intended for future publication) of FOISA.
6. On 1 October 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 with the outcome of the Authority's review outcome because it had not published the information on its website when it had said it would, and it had not responded meaningfully to his request.

## 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 29 November 2024, the Authority was notified in writing that the Applicant had made a valid application and the case was 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 about its application of the exemptions and its handling 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.

### ***The Authority's handling of the request***

11. As stated above, in its review outcome of 26 June 2024, the Authority provided the Applicant with three links to information:
  - (i) fleet information, which it informed the Applicant was updated quarterly;
  - (ii) additional information relating to appliances which was available in the guidance notes for the Fire Safety and Organisational Statistics; and,
  - (iii) an Excel worksheet providing the vehicle dataset linked to 2022-2023 statistics.

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<sup>1</sup> <https://www.foi.scot/decision-1662024>

12. Below those links, the Authority stated that the requested information was withheld under two exemptions. The Authority stated that:
  - (i) "...the requested information is regarded as exempt under section 25(1) of Freedom of Information Act (Scotland) 2002, where information can reasonably be obtained other than by requesting it"; and
  - (ii) "an update to these statistics will be published on 30 August 2024, therefore, the SFRS regard the requested information as exempt under Section 27(1)(a)(i) of Freedom of Information Scotland (Scotland) Act 2002".
13. The Applicant appears to have understood from the review outcome that the Authority was applying the exemption at section 27(1)(a)(i) (Information intended for future publication) of FOISA to the fleet list and he subsequently appealed to the Commissioner on the basis of dissatisfaction that the fleet list was not updated when he had been informed it would be.
14. During the investigation, the Authority stated that it provided the link to the fleet list because this contained the information the Applicant had requested. It explained that it had only provided the link to the fire safety and organisational statistics as additional information (i.e. while it considered that the Applicant might find this information useful, it did not consider it to be within scope of the request).
15. The Authority went on to clarify that it had applied section 27(1)(a)(i) to the fire safety and organisational statistics and not to the fleet information. Furthermore, it noted that it had updated the fire safety and organisational statistics on its website on 29 August 2024 (that is, the update had been provided in line with the latest expected date of publication provided to the Applicant).
16. The Authority explained that it had provided assistance to the Applicant by providing a link to this additional information which contained previous fleet and vehicle information. It commented that it believed the Applicant would find this information useful as it would enable him to carry out comparisons to previous years.
17. The Authority argued that it could simply have provided the link to these statistics (without any further information) but felt it was beneficial to inform the Applicant that updated statistics would be published in the future.
18. Addressing the update of the fleet list (referenced in its review outcome), which it considered to fall within scope of the Applicant's request, the Authority stated that it endeavoured to publish the latest fleet list every quarter (and it provided a screenshot of its publication scheme to this effect) but explained that the summer version of this list had not been updated online as intended, due to staffing reasons. It further submitted that the list was updated in October 2024. It stated that it had applied section 25(1) (Information otherwise accessible) of FOISA to the fleet information (and not, as detailed above, section 27(1)(a)(i) of FOISA).

*The Commissioner's view on the Authority's handling of the request*

19. The Commissioner notes the Authority's position that it had intended to be helpful by providing further information to the Applicant but he considers that the Authority's review outcome was confusing in terms of both layout and wording.
20. The layout of the review outcome meant that three links to information, only one of which the Authority considered fell within scope of the request, were provided before any exemptions

were applied. This meant that, in the Commissioner's view, the review outcome did not make clear either:

- (i) the specific information which the Authority considered to fall within scope of the request; or,
- (ii) which exemptions were being applied to which information.

21. While the Authority referred to "additional information" before the second link, the Commissioner considers that it was not clear that the Authority considered this to be outwith the scope of the request, given that the exemptions were not addressed until after a third link had been provided and which exemption applied to which information was not specified.
22. Moreover, the Authority twice referred to "the requested information", once with reference to it being subject to the exemption at section 25(1) of FOISA and once with reference to it being subject to section 27(1)(a)(i) of FOISA. The Commissioner considers, therefore, that the Authority erroneously referred to the Fire Safety and Organisational Statistics as "the requested information" which added to a general lack of clarity in the review outcome.
23. This lack of clarity was compounded because the review outcome contained reference to two sets of information, both of which were regularly updated, meaning either could have been the subject of the exemption at section 27(1)(a)(i). This resulted in the Applicant mistakenly (but, in the Commissioner's view, entirely understandably) believing that the exemption had been applied to the fleet list and then, when that list was not updated by the expected date (which the Applicant believed to relate to the fleet information but the Authority intended to relate to the organisational statistics), he was dissatisfied.
24. The Commissioner also considers that it was understandable that the Applicant believed the section 27(1)(a)(i) reference to be in relation to the fleet information, given that the review outcome referred to how the fleet list was updated quarterly, and then again referred to "update" in relation to section 27(1)(a)(i).
25. However, even if the review outcome had made explicit the Authority's intention that the organisational statistics were being provided in addition to the information falling within scope of the request, the Commissioner's view is that the Authority was incorrect to apply this, or any, exemption to that additional information.
26. For the avoidance of doubt, the Commissioner would stress that authorities should only apply an exemption to information which they consider to fall within scope of a request and not to other information which it considers may be helpful. Any further context or clarification which the Authority considers necessary or helpful should, of course, be provided to the Applicant – but this should never be done by means of applying exemptions.

### ***Section 15 - (Duty to provide advice and assistance)***

27. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice or 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 20043 (the Section 60 Code)<sup>2</sup>.

28. Paragraph 9.7.1 of the Section 60 Code advises authorities that: "It is good practice for authorities to check responses for accuracy and quality before they are issued."
29. For all of the reasons set out above, the Commissioner considers that the quality of the review outcome fell below the standard of clarity required to allow an applicant (or anyone else) to properly understand it, and that the Authority therefore did not fulfil its duty under section 15 of FOISA to advise and assist the Applicant.
30. In making this finding, the Commissioner recognises that the Authority only provided the Applicant with links to the additional information in order to be helpful, and he acknowledges that it did not intend to confuse or mislead the Applicant in any way. However, he must conclude that in this particular case, its efforts to be helpful had the opposite effect. He would suggest that in the future, the Authority carefully considers what information is captured by a request and structures any response or review outcome to clearly communicate that to the requester.

### ***Section 27(1) of FOISA – Information intended for future publication***

31. The Applicant made his application to the Commissioner because he was dissatisfied that the information he had requested was not published when the Authority had indicated it would be published, and the Applicant therefore argued that the Authority had not responded meaningfully to his request. (The Commissioner notes that under section 27(1), authorities are not obliged to publish when they state they will; authorities must only provide evidence that the intention to publish on a particular date exists at the time the request is made; nor, although it may be helpful to do so, are they obliged to inform an applicant that information has been published.)
32. However, given the Authority's clarification that it did not apply section 27(1) of FOISA to the fleet list but to information which fell outwith the scope of the request, the Commissioner cannot consider that exemption.
33. Given that the Applicant did not challenge the Authority's application of section 25(1) of FOISA to the information, the Commissioner will not consider that aspect of the request.
34. The Commissioner has recorded the various failures in relation to this request in his case management system in line with his Interventions Procedures, the purpose of which is to promote good FOI practice across Scottish public authorities. This may be taken into account in any future enforcement action the Commissioner considers necessary to take against the Authority.

## **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

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<sup>2</sup> <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>

Applicant, in that it failed to comply with its duty under section 15(1) of FOISA to provide the Applicant with reasonable advice and assistance in relation to his request.

Given the clarification provided during the investigation (and highlighted in this decision), the Commissioner does not require the Authority to take any action in response to this failure.

## **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**

**27 June 2025**