



Scottish Information
Commissioner
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Decision Notice 186/2025

Updates or changes to Local Medical Committee agreement

Authority: Greater Glasgow and Clyde Health Board
Case Ref: 202401551

Summary

The Applicant asked the Authority for information relating to any updates or changes to the terms of the Local Medical Committee (LMC) agreement or confirmation that there had been no changes or updates to the agreement. The Authority stated that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 15 August 2024, the Applicant made a request for information to the Authority. Referring to information previously provided to her, she asked for:

“... copies of any updates or changes to the terms of the LMC Agreement as contained in the information enclosed with your email. If there are no updates or changes then please confirm this and that the terms of the LMC Agreement remain as outlined in the information enclosed with your email.”

2. The Authority responded on 9 September 2024. It informed the Applicant that the LMC website (which it provided a link to) contained any updated changes and that the information requested was therefore exempt from disclosure under section 25(1) of FOISA on the basis it was otherwise accessible to her.
3. On 11 September 2024, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because the link provided by the Authority did not make it clear where the information requested was available.
4. The Authority notified the Applicant of the outcome of its review on 16 September 2024. It explained that it had attempted to locate the information requested on the LMC website, but it had been unable to find it. It said that a further check of information sources also failed to locate the information requested. It said it had therefore contacted the LMC who had confirmed that no update had been issued to the LMC agreement since 2013 and that the LMC now advised clinicians to follow published BMA guidance (which it provided a link to).
5. On 25 November 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated that she was dissatisfied with the outcome of the Authority's review because the Authority had "failed to comply with its legal obligations" in responding to her request. She subsequently clarified that she disputed the credibility of the Authority's claim that it held no information regarding any updates to the LMC agreement.

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 29 November 2024, 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.

Commissioner's analysis and findings

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

Section 17(1) of FOISA – Notice that information is not held

10. 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 public 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.
11. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the

public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
13. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) held by the public authority.

The Applicant's submissions

14. The Applicant acknowledged that the Authority had said that it did not hold any information regarding updates to the LMC agreement. However, due to previous experiences with the Authority, she said that she doubted the credibility of this claim.
15. The Applicant was also unhappy that the Authority had originally – and incorrectly – applied the exemption in section 25(1) of FOISA to her request. She considered that this was deliberate and had been done with the intention of preventing the information from being disclosed under FOISA.

The Authority's submissions

16. The Authority apologised for initially advising the Applicant that the information requested was exempt under section 25(1) of FOISA on the basis it was otherwise accessible on the LMC website. It acknowledged that this was a failure, and that it should have double-checked that the specific information requested was in fact available via the weblink provided.
17. The Authority said that during the period it handled the Applicant's request it had been experiencing difficult circumstances which had impacted on its ability to maintain an acceptable level of compliance with FOISA.
18. The Authority noted that the review outcome had confirmed that no update had been made to the LMC agreement since 2013 – a position it had confirmed with the LMC itself – and that the LMC now advised clinicians to follow published BMA guidance (which it had provided a link to). It said it had no further information that it could provide to the Applicant.
19. The Authority provided evidence to the Commissioner of emails between the Authority and the LMC as part of its attempt to establish whether there had been any updates to the LMC agreement. As stated above, LMC confirmed to the Authority that update had been issued to the LMC agreement since 2013 and that the LMC now advised clinicians to follow published BMA guidance.

The Commissioner's view

20. Given the explanations and submissions provided, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held. He is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold any recorded information regarding updates to the LMC

agreement, because the agreement had not been updated since 2013 – a position it confirmed with the LMC.

21. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case. He particularly understands why the Applicant believed the specified information to be held, given the Authority had initially indicated that this information was otherwise accessible to her via the LMC website.
22. However, in the circumstances, the Commissioner concludes, on balance, that the Authority was correct to inform the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Handling matters

23. While the Commissioner notes that the Applicant has expressed dissatisfaction with the Authority's decision to apply the exemption in section 25(1) in its initial response to her, the key issue he must consider is whether the Authority's subsequent response to her requirement for review was appropriate.
24. The purpose of the review stage in FOISA is to provide authorities with the opportunity to reconsider their handling of an initial information request, in order to ensure that they are satisfied that the request has been dealt with fully in accordance with FOISA, prior to an application being made to the Commissioner (if necessary).
25. An authority may well commit breaches of FOISA regarding its handling of an initial request. Where an authority has subsequently revised its decision and dealt with the request appropriately during the review stage, that authority will generally be deemed to have complied with FOISA in its handling of the request.
26. The Commissioner acknowledges the difficulties the Authority was experiencing during the period it handled the Applicant's request, which impacted on its ability to maintain an acceptable level of compliance with FOISA. However, he would urge authorities to respond to information requests carefully, in order to maintain the confidence of requesters in their responses.

Decision

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

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

29 July 2025