



Scottish Information
Commissioner
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Decision Notice 187/2025

Local Medical Committee agreement

Authority: Greater Glasgow and Clyde Health Board
Case Ref: 202401275

Summary

The Applicant asked the Authority for information about the LMC agreement where secondary care consultants are required to communicate the outcome of consultations to patients, specifically evidence that consultants had been reminded of their responsibilities for doing so. The Authority informed the Applicant that it did not hold the information requested. Following further correspondence from the Applicant, the Authority identified information falling within the scope of the request which it disclosed to the Applicant. The Commissioner investigated and found that the Authority failed to comply with FOISA in responding to the Applicant's request.

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); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 4 December 2023, the Applicant made a request for information about the LMC agreement where secondary care consultants are required to communicate the outcome of consultations to patients, specifically evidence that consultants had been reminded of their responsibilities for doing so.
2. The Authority failed to respond to the request.

3. On 8 February 2024, the Applicant wrote to the Authority requesting a review of its failure to respond.
4. The Applicant wrote to the Commissioner on 11 March 2024, stating that she was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. This resulted in the Commissioner issuing [Decision 067/2024](#)¹, in which he found that the Authority had failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. He required the Authority to respond to the Applicant's requirement for review.
6. The Authority notified the Applicant of the outcome of its review on 11 June 2024. It informed the Applicant that the LMC agreement was a shared understanding, which was not formally documented. It therefore issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
7. On 22 September 2024, following further correspondence with the Authority, 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 wrongly informed her that it did not hold the information requested. She considered that the Authority had deliberately issued her with a notice, in terms of section 17(1) of FOISA, to prevent the information requested from being disclosed.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 12 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
10. 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

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

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

12. 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.

¹ <https://www.foi.scot/decision-0672024>

13. 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.
14. 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.
15. 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

16. In her application to the Commissioner, the Applicant explained that she had contacted the Authority after it had issued its review outcome on 11 June 2024, to challenge its position that it did not hold the information requested.
17. Specifically, the Applicant advised the Authority that she disagreed that the LMC agreement was not formally documented because her GP practice had informed her that it was, in fact, set out in a letter dated October 2013 from the Lead Director for Acute Medical Services at the Authority.
18. The Authority subsequently responded to her further correspondence on 14 August 2024 and advised that following searches it had identified information relating to the LMC agreement, which it disclosed to the Applicant.
19. The Applicant said that she therefore required a decision from the Commissioner because the Authority had wrongly informed her that it did not hold the information requested, which she considered was a deliberate action to prevent the information requested from being disclosed. She believed that the Authority would not have provided her with the information requested at all had it not been for her persistence.

The Authority's submissions

20. As stated above, the Authority located information relevant to the request after it had issued its review response, which had issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of her request.
21. 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.
22. In this case, the Authority explained that the person responding to the Applicant's request had "readily accepted" a response from a Service Director that the LMC agreement was "not a document", but more of an understanding between clinicians following discussion. As a result, the Authority had issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

23. After the Applicant had contacted the Authority following its review outcome, the Authority asked the relevant service to conduct fresh searches for any documentation that matched the description of the information requested. This resulted in the Authority locating recorded information falling within the scope of the Applicant's request, which it disclosed to her.
24. The Authority apologised for failing to identify this information earlier and said that, under normal operating circumstances, it would have sought unambiguous confirmation that the relevant service had undertaken necessary searches to establish whether any information falling within the scope of the request was held.

The Commissioner's view

25. As stated above, the Authority issued the Applicant with a notice, in terms of section 17(1) of FOISA that it did not hold the information requested. However, the Authority subsequently, following further correspondence from the Applicant (after the date of the review outcome) challenging its position that it held no relevant recorded information, identified information falling within the scope of the request, which it disclosed to the Applicant.
26. The Commissioner therefore finds that in failing to take adequate steps to identify, locate and provide the requested information in responding to the Applicant, the Authority failed to comply with section 1(1) of FOISA. In these circumstances, the Authority was incorrect to give the Applicant notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.
27. Given that information falling within the scope of the request has now been located and disclosed to the Applicant, the Commissioner does not require the Authority to take any action in respect of this failure, in response to the Applicant's application.

Handling matters

28. 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.
29. However, the Commissioner would urge authorities to ensure that they undertake adequate and proportionate searches in response to information requests. In order to respond to a request, a public authority must be able to identify all relevant information which it holds. In this case, that did not happen either at the initial response or the review stage – and the Authority only identified information falling within the scope of the request following further correspondence from the Applicant.
30. The Applicant said that she believed that the Authority had deliberately failed to identify this information earlier. The Commissioner has identified no evidence to support this conclusion, and he again acknowledges the difficulties the Authority was experiencing during the period it handled the Applicant's request. However, in his view, this underlines the importance of dealing with requests fully in accordance with FOISA, prior to an application being made to the Commissioner (if necessary) – and by the date of the review outcome (at the latest). Failure to do so can result in a loss of confidence in authorities by requesters.

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 the Authority failed to comply with Part 1 of FOISA by wrongly notifying the Applicant, in terms of section 17(1) of FOISA, that it held no information falling within the scope of request.

Given that information falling within the scope of the request has now been located and disclosed to the Applicant, the Commissioner does not require the Authority to take any action in response to this failure in response to the Applicant's application.

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