



Scottish Information  
Commissioner  
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# Decision Notice 213/2025

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## Specific closed Fitness to Teach cases

Authority: General Teaching Council for Scotland  
Case Ref: 202500246

### Summary

The Applicant asked the Authority for information on the closure of two specific sets of Fitness to Teach cases. The Authority stated that it did not hold the information requested. The Commissioner investigated and found that the Authority had failed to satisfy him that it did not hold the information requested. He required the Authority to issue a revised review response.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 1 November 2024, the Applicant made a request for information to the Authority. He referred to [a previous FOI request on the Authority's disclosure log](#)<sup>1</sup>, specifically to two sets of cases where the Authority decided that no further action was warranted in relation to Fitness to Teach allegations. Of these two sets of cases, the Applicant asked "...for how many had the complaint (now known as 'referral') been made within five years of the most recent alleged misconduct?".

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<sup>1</sup> <https://www.gtcs.org.uk/freedom-of-information/disclosure-log/22-23-60>

2. On 29 November 2024, the Authority informed the Applicant that it would not meet the statutory deadline (29 November 2024) for responding to his request and that it would respond on the week commencing 2 December 2024.
3. The Authority responded on 11 December 2024. It issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested and explained why. It also advised the Applicant that if he was able to reframe his request to refer to the information he wished to obtain without basing it on the statistics disclosed in response to an earlier request, it could review its records and provide any information it held.
4. On the same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not agree that the Authority did not hold the information requested.
5. The Authority notified the Applicant of the outcome of its review on 19 December 2024, which fully upheld its original decision.
6. On 12 February 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review because he did not agree that the Authority did not hold the information requested and he considered the advice and assistance the Authority provided in its initial response to be misleading.

## **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 19 March 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 related to how it established it did not hold the information requested.

## **Commissioner's analysis and findings**

10. 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***

11. 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.
12. 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.

13. 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 lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority.
14. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant recorded information is actually held by the public authority (or was, at the time it received the request).

#### *The Applicant's submissions*

15. The Applicant noted that the sets of cases he referred to in the present request were disclosed as part of the Authority's response to a previous request. He submitted that either:
  - the Authority held information about how it derived the response to the previous request – in which case he did not understand why it could not use this information to identify the cases in response to his present request, or
  - the Authority did not keep adequate records of how the previous request was responded to – which would be contrary to best practice.

#### *The Authority's submissions*

16. The Authority confirmed that the request was circulated to its Regulatory Investigations team, the functional area which administers its Fitness to Teach process.
17. The Authority explained that considerable time had passed between the request referred to in the Applicant's request and his present request. To answer the question in the present request, it said it would need to know which cases its response to the previous request referred to. However, it said that it did not record the list of cases – only the number of cases.
18. The Authority confirmed that it did not hold any further information that would assist the identification of the cases its response to the previous request referred to. It explained that it had consulted various individuals in the Regulatory Investigations team and undertaken multiple searches using Microsoft Purview to establish this.
19. Over the course of providing responses to similar requests, the Authority identified a "historic spreadsheet" which enabled it to identify relevant cases which were dealt with over the period of interest to the Applicant. However, it said it was not possible to identify from the spreadsheet the list of cases referred to in the Authority's response to the previous request and that the spreadsheet did not record information on the date of the "most recent alleged misconduct".
20. Without this spreadsheet, the Authority said that it would have no way of knowing which cases were dealt with in this period without full interrogation of each of its Fitness to Teach files. The spreadsheet was the only record that the Authority could use to reduce the number of records it would need to interrogate to respond to the Applicant's request.

21. The Authority submitted that to provide a response to the Applicant's request it would therefore have to "run a full interrogation" of its Fitness to Teach files to ensure it identified the correct cases. This would require two steps:
  - (i) identifying the cases that fell into the two sets of cases referred to in its response to the previous request
  - (ii) establishing when the complaints in the above cases had been made relative to the most recent alleged conduct.
22. The Authority stated that there were approximately 840 cases on the historic spreadsheet, all of which would need to be individually interrogated for information relevant to the request. As a result, the Authority said it did not hold the information requested "in a recorded way in order to respond to the request".
23. The Authority submitted that, even if it were to individually interrogate the 840 cases listed on the spreadsheet, there was no guarantee that this would yield the information requested as registrants may have lapsed, died or requested their records be deleted.
24. The Authority explained that it did not consider it appropriate to rely on a historic spreadsheet to "presume" any cases identified from that spreadsheet were the cases referred to in the response to the Applicant's previous request. It also said it did not consider this a reasonable or responsible way in which to respond to an information request.

#### *The Commissioner's view*

25. The Commissioner has carefully the submissions made by both the Applicant and the Authority.
26. The Commissioner accepts that the Authority does not hold information that specifically identifies the sets of cases the Applicant referred to in his request with direct reference to the Authority's response to a previous request) and that it is therefore not possible to readily identify these sets of cases in response to the present request.
27. However, the Commissioner is required in this case to determine, on the balance of probabilities, whether the information requested is held by the Authority – notwithstanding the difficulties that may exist in readily identifying it. He does not agree that it follows, necessarily, from the inability to link the requested information directly back to the previous request that the information is not held – that the information cannot be identified and located in other ways.
28. As rehearsed earlier, the Authority stated that to identify the information requested it would have to individually interrogate each of the approximately 840 cases listed on the historic spreadsheet to identify the cases that fell within the two sets of cases referred to in the Applicant's request and then to establish when the complaints in the relevant cases had been made relative to the most recent alleged misconduct.
29. The Commissioner has also taken into account information on the Authority's [website](https://www.gtcs.org.uk/faqs/how-long-will-you-keep-the-referral-made-about-me)<sup>2</sup>, which states that information relating to Fitness to Teach referrals will be retained for 15 years in line with the Authority's Records Management Policy.
30. The Commissioner cannot, therefore, accept that the information requested is not held. The Authority's position that the information requested is not held is speculative: it has neither

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<sup>2</sup> <https://www.gtcs.org.uk/faqs/how-long-will-you-keep-the-referral-made-about-me>

demonstrated the information no longer exists nor made a compelling case that it is more likely than not to no longer exist. In fact, the Authority has expressly set out how the information requested could be identified, albeit with significant effort.

31. On the balance of probabilities, therefore, the Commissioner considers it more likely than not that the Authority holds the information requested, or at least some of it (allowing for the possibility that some of the information might have been deleted for the reasons the Authority set out in paragraph 23).
32. The Commissioner acknowledges that identifying the information requested may well be laborious and time-consuming (and the Authority has alluded to the pressures created by this and other current requests). However, these are not factors that make information “not held” for the purposes of FOISA. If the Authority is concerned that to comply with the request would exceed the upper cost limit under FOISA or otherwise impose a significant burden, there are other provisions available within FOISA that could be applied to the request.
33. The Commissioner cannot, therefore, find that the Authority was entitled to rely on section 17(1) of FOISA in this case. He requires the Authority to issue a revised review outcome to the Applicant, otherwise than in terms of section 17(1) of FOISA.

#### ***Section 15 of FOISA – Duty to provide advice and assistance***

34. In this case, the Authority advised the Applicant in its initial response that if he was able to reframe his request to refer to the information he wished to obtain without basing it on the statistics disclosed in response to an earlier request, it could review its records and provide any information it held.
35. The Applicant subsequently made a reframed request, which the Authority refused to comply with on the basis that to do so would exceed the upper cost limit under FOISA. He argued that it was not reasonable for the Authority to suggest a course of action that would enable the information to be released and to then refuse to release the information. He therefore considered the advice and assistance the Authority provided to be misleading.
36. The Authority confirmed that the advice and assistance it provided (as set out in paragraph 34) in its initial response (which issued a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested) did not anticipate any specific means by which the Applicant would wish to refine his request.
37. The Commissioner acknowledges the potential argument that the Authority might have anticipated the possibility that a reframed request would have been likely to result in section 12 of FOISA being engaged. While there is no obligation on an authority to speculate as to how a new request might be framed (and while the Commissioner cannot comment in any detail on the Authority’s handling of a subsequent request made by the Applicant, which is not the subject of this application), the Commissioner would urge authorities to take reasonable steps to ensure any advice and assistance given is useful and likely to be capable of being acted upon.

#### ***Time taken to respond to request***

38. In his application, the Applicant expressed dissatisfaction with the Authority’s failure to respond within the statutory timescale to his request.
39. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.

40. Following the Authority informing him that it would not meet the statutory deadline to respond to his request, the Applicant attempted to submit a valid requirement for review on 29 November 2024. His requirement for review was not valid, as it was technically submitted before the expiry of the time allowed by section 10 of FOISA for complying with the request (notwithstanding the Authority informing him that it would not meet that deadline).
41. The Applicant's subsequent requirement for review on 11 December 2024, which was valid, did not raise dissatisfaction with the Authority's failure to respond within the statutory timescale to his request. The Commissioner therefore cannot reach a formal finding on matter. However, it is a matter of fact that the Authority did not provide a response to the Applicant's request for information within the timescale required by section 10(1) of FOISA.

## **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 breached section 1(1) of FOISA by notifying the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested.

The Commissioner therefore requires the Authority to issue a revised review response to the Applicant, otherwise than in terms of section 17(1) of FOISA, by **17 October 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**

**2 September 2025**