



Scottish Information
Commissioner
www.foi.scot

Decision Notice 215/2025

Complaints about a named doctor

Authority: Lothian Health Board

Case Ref: 202500095

Summary

The Applicant asked the Authority for the number of complaints against a named doctor. The Authority stated that complying with the request would exceed the upper cost limit under FOISA. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position. He required the Authority to comply with the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 10 October 2024, the Applicant made a request for information to the Authority. Among other things, he asked for:

“the number of Stage 1 or Stage 2 complaints received by the [Authority] since 1 January 2024 in which [named doctor’s] clinical or professional conduct has featured.”
2. The Authority responded on 11 November 2024. It said that to extract the information requested it would have to look through individual patient complaints as the information was not recorded in a centrally extractable format. It also said that:
 - where the request sought information about a third party, it said it would apply the exemption in section 38(1)(b) of FOISA

- where the requester sought information about themselves, it said it would apply the exemption in section 38(1)(a) of FOISA.
3. On 15 November 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because:
 - the Authority appeared to suggest it held the information (albeit it would be required to search through individual records), but it had failed to confirm whether it in fact held the information requested or to cite an exemption for refusing to do so
 - he did not agree that either of the exemptions in section 38(1)(a) or (b) of FOISA applied to the information requested.
 4. The Authority notified the Applicant of the outcome of its review on 20 December 2024. It reiterated that the information requested was not held centrally and that it would be required to search through individual records to comply with the request. It refused to comply with the request, relying on section 12(1) of FOISA. It also indicated that the exemptions in section 38(1)(a) and (b) of FOISA could be applicable.
 5. On 15 January 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 had justified its application of section 12(1) of FOISA to his request, nor the potential applicability of the exemptions in section 38(1)(a) and (b) of FOISA.

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 4 February 2025 the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 related to its reasons for applying section 12(1) of FOISA.

Commissioner's analysis and findings

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

Section 12(1) – Excessive cost of compliance

10. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). The Commissioner has no power to order a public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.

11. The Authority claimed that it was not obliged to comply with the request as the cost of doing so would be more than £600.
12. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that the cost of complying with the request would exceed the £600 cost limit.
13. The Authority submitted that there were 729 complaints that related to two prisons the named doctor was detailed to work across. Regarding one prison, it confirmed there were 375 Stage 1 complaints and 116 Stage 2 complaints.
14. The Authority said that each complaint (which were mostly handwritten) for this prison would need to be manually inspected to establish whether the named doctor was involved, which it estimated would take 15 minutes for a Stage 1 complaint and 30 minutes for a Stage 2 complaint. It submitted that this would take over 150 hours for this prison alone.
15. The Authority confirmed that it was not possible to electronically search individual complaints using the names of clinicians as these details “were not recorded in this way within the complaint process”. However, it indicated that it was looking to record this information within its DATIX system going forward (though this would not include “historical” information).
16. The Commissioner is not satisfied with aspects of the Authority’s submissions. He will consider these in what follows.
17. Firstly, the Commissioner notes that the number of complaints mentioned in the Authority’s review outcome is different to (and higher than) the number of complaints mentioned in its submissions to the Commissioner.
18. The Authority explained that these differences could be explained by the different dates that the information was extracted from its records management systems. It confirmed that the information provided to the Commissioner comprised more recent numbers.
19. The Commissioner accepts that this could explain the discrepancy, but would remind the Authority that requests should be responded to based on the information held at the time the request is received.
20. Secondly, the Commissioner notes that the Authority provided contradictory submissions on the number of prisons the named doctor was detailed to work across. While it initially stated that the named doctor worked at two separate sites, it subsequently indicated that it was aware of the named doctor only working at one site – where there were 491 complaints between Stage 1 and Stage 2. (This site was used in the Authority’s example calculations given above.)
21. The Commissioner has not received any explanation of how the confusion regarding the named doctor’s place of work arose, but will proceed on the clarified basis that only complaints from one site are relevant.
22. The Authority also did not provide any evidence of sample searches to quantify the time required, despite a request to do so. In the absence of sample searches, the investigating officer inspected a sample of ten complaints that the Authority provided during the investigation.
23. The time taken to establish whether a complaint related to the named member of staff varied substantially. However, the Commissioner notes that the primary difference in this was not

whether the complaint was handled at Stage 1 or Stage 2. Instead, the time taken was largely dependent upon whether the complaint named specific individuals in the body of the complaint.

24. On average, the investigating officer took 3.2 minutes to establish whether a complaint relates to the named staff member. However, for three of these complaints, it was not possible to establish whether the unnamed staff member that the complaint refers to is the named staff member. The Commissioner considers, on balance, that the Authority would hold additional information that would allow it to disambiguate at least some of these references to unnamed staff members.
25. In the absence of sample searches from the Authority, the Commissioner cannot be certain how long this process of disambiguation would take. Having considered the number of medical staff detailed to work across this site (and the use of locum doctors), he considers that an average of five additional minutes (i.e. in addition to the standard average of 3.2 minutes per complaint) per ambiguous complaint is a reasonable estimate.
26. This would bring the average time to consider a complaint up to 4.7 minutes, which would amount to approximately 38.5 hours to consider each of the 491 complaints potentially falling within the scope of the request. At the rate of £15 an hour (the maximum hourly rate public authorities can charge for staff time), this would cost approximately £577.50. This falls below the £600 upper cost limit.
27. In all the circumstances, the Commissioner cannot therefore uphold the Authority's claim that it would be too costly to comply with the request. He requires the Authority to provide the Applicant with a new review outcome (other than in line with section 12(1) of FOISA).
28. The Commissioner would strongly recommend that public authorities ensure that their cost calculations are robust. This will usually include carrying out sample searches to estimate the volume of documents potentially containing relevant information and the time that would be taken to inspect these documents for information in scope of the request in question.

Section 15 – Duty to provide advice and assistance

29. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
30. Section 15(2) states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms to 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](#)),¹ is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).
31. The Section 60 Code provides guidance to Scottish public authorities on the practice which Scottish Ministers consider desirable for authorities to follow in connection with the discharge of their functions under FOISA. The Section 60 Code provides (at 9.4.3):

"When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

exceeded. Any narrower request would be a separate new request and should be responded to accordingly."

32. In this case, the Applicant was concerned that the Authority had not provided a detailed calculation or breakdown of the costs.
33. The Authority accepted that it had not provided a calculation to the Applicant, nor given him advice on how to narrow his request (although it suggested methods of narrowing the scope of the request to the Commissioner).
34. In the circumstances, the Commissioner cannot therefore be satisfied that the Authority has discharged its duties under section 15(1) of FOISA.
35. However, as the Commissioner has found that the Authority was not entitled to rely upon section 12 of FOISA to refuse the Applicant's request, he does not require the Authority to take any action in response to this failing.

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.

The Commissioner is not satisfied that the Authority was entitled to inform the Applicant that it would incur excessive costs in line with section 12(1) of FOISA to respond to his request. He also finds that the Authority failed to provide adequate advice and assistance in terms of section 15(1) of FOISA.

The Commissioner therefore requires the Authority to provide the Applicant (in terms of section 21 of FOISA) with a revised review outcome, other than in terms of section 12 of FOISA, by **20 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
4 September 2025