



Scottish Information
Commissioner
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Decision Notice 219/2025

Complaints/caseload information

Applicant: Anonymous

Authority: Scottish Public Services Ombudsman

Case Ref: 202500412

Summary

The Applicant asked the Authority for various information relating to complaints/cases received by the Authority. The Authority stated that the information was exempt from disclosure and/or that the cost of compliance would exceed the upper cost limit under FOISA. The Commissioner investigated and found that the information requested was exempt from disclosure.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (2)(b) (Effect of exemptions); 26(a) (Prohibitions on disclosure); 47(1) and (2) (Application for decision by Commissioner).

Scottish Public Services Ombudsman Act 2002 (the SPSO Act) section 19 (Confidentiality of information).

Background

1. On 9 December 2024, the Applicant made a request for information to the Authority. He asked for:
 - (1) The number of times exceptional circumstances to customer time-scale adherents have been applied to cases within the [Authority] in the last five years.
 - (2) The specific [Authority] guidance pertaining to the application of customer time-scale exemptions on cases.

- (3) The number of cases which gained time-scale exemptions within the last five years.
 - (4) The number of cases pertaining to neurodivergent people which have received an exemption from adhering to time lines set by the [Authority] in last five years?
 - (5) In what number of cases pertaining to exceptional circumstances did the [Authority] consider reasons of mitigation such as disability and capacity of mind?
 - (6) In applying the exceptional circumstances, how many cases did the [Authority] consider external evidence supplied by the claimants doctors, advocate or Elected Member?
 - (7) In applying the exceptional circumstance rule, how many cases specified compliance with the Equality Act 2010, was just reason why exceptional circumstances was granted?
2. The Authority responded on 20 December 2024 in the following terms:
 - for part (2) of the request, it provided information to the Applicant
 - for parts (1) and (3)-(7) of the request, it informed the Applicant, in line with section 12 of FOISA, that as it would cost in excess of £600 to fulfil these parts of his request it was not obliged to comply with them
 - for parts (4)-(7) of the request, it additionally applied the exemption in section 26(a) of FOISA.
 3. On 11 February 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he disagreed with the application of section 12 and the exemption in section 26(a) of FOISA to (variously) parts (1) and (3)-(7) of his request.
 4. The Authority notified the Applicant of the outcome of its review on 7 March 2025, which fully upheld its original decision.
 5. On 18 March 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 for the reasons set out in his requirement for review.

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 19 March 2025, 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 regarding the application of sections 12 and 26(a) 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 26(a) – Prohibitions on disclosure

10. The Authority initially applied the exemption in section 26(a) of FOISA to parts (4)-(7) of the Applicant's request. However, the Authority confirmed during the investigation that it wished to apply the exemption in section 26(a) of FOISA to parts (1) and (3)-(7) of the Applicant's request.
11. Section 26(a) of FOISA exempts information from disclosure under FOISA, where disclosure of the information is prohibited by or under an enactment. This is an absolute exemption, in that it is not subject to the public interest test set down in section 2(1)(b) of FOISA.
12. The Applicant disagreed that the information requested would "breach confidentiality". He said that the information requested was "purely of general interest" and that it was not his intention to "identify individuals which would render their confidential personal information".
13. The Authority argued that a prohibition for the purposes of the exemption in section 26(a) of FOISA was created by sections 12 and 19 of the SPSO Act.
14. Section 19(1) of the SPSO Act provides that information obtained by the Authority, or any of the Authority's advisers, in connection with any matter in respect of which a complaint or a request has been made, must not be disclosed except for a limited range of purposes specified elsewhere in section 19. These purposes do not include disclosure of information under FOISA.
15. The Authority confirmed that the information requested in parts (1) and (3)-(7) of the Applicant's request represented information obtained by the Authority in connection with any matter in respect of which a complaint has been made.
16. In the circumstances, and given the nature of the request, the Commissioner accepts that this is information of a description covered by section 19(1) of the SPSO Act. He also accepts that section 19(1) of the SPSO Act creates a prohibition on the disclosure of information that engages section 26(a) of FOISA.
17. The Commissioner therefore accepts that the Authority was entitled to apply the exemption in section 26(a) of FOISA to withhold the information requested in parts (1) and (3)-(7) of the Applicant's request. In reaching this conclusion, he has not found it necessary to consider section 12 of the SPSO Act as well as section 19.
18. As the Commissioner has found that the Authority was entitled to apply the exemption in section 26(a) of FOISA to withhold the information requested in parts (1) and (3)-(7) of the Applicant's request, he is not required to go on to consider whether the Authority was also entitled to apply section 12 of FOISA to these parts of the request.

Other matters

19. The Applicant raised concerns that the Authority had not provided him with advice and assistance on how to narrow the parts of his request to which the Authority applied section 12(1) of FOISA.
20. The Commissioner considers that where section 12(1) of FOISA is engaged, the duty to provide advice and assistance is particularly important in order to enable a requester (who

will not necessarily understand how information is held or organised) to effectively narrow the scope of their request.

21. In this case, the Commissioner has found that the exemption in section 26(a) of FOISA applied to the parts of the request to which the Authority also applied section 12(1) of FOISA.
22. In the circumstances, the Commissioner therefore does not consider that the Authority could have provided the Applicant with meaningful advice on how to narrow these parts of his request. This is because section 26(a) of FOISA would have applied to these parts of his request even if the cost of complying with them would not have engaged section 12(1) of FOISA (i.e. even if they had been narrowed).
23. The Applicant also stated he was dissatisfied that the Authority had said that it did not hold some of the information he asked for as it usually destroyed “most information on a complaint 26 months after the date of last significant contact”.
24. The Commissioner’s remit is limited to considering whether the Authority complied with Part 1 of FOISA in responding to the Applicant’s request. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.

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.

Cal Richardson
Deputy Head of Enforcement

16 September 2025