



Scottish Information
Commissioner
www.foi.scot

Decision Notice 196/2025

Racism in cricket – referrals to Cricket Scotland

Authority: Scottish Sports Council
Case Ref: 202500001

Summary

The Applicant asked the Authority for information relating to referrals of alleged racist incidents to Cricket Scotland stemming from an independent review into racism in Scottish cricket. The Authority stated that it did not hold some of the information requested, disclosed other information and withheld the remainder. The Commissioner investigated and found that the Authority had only partially complied with FOISA in responding to the Applicant's request. He required the Authority to disclose the withheld information and to reconsider part of the request and issue a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 38(1)(b), (2A), (5) (definitions of "the data protection principles", "data subject", "personal data" and "processing", "the UK GDPR") and (5A) (Personal information); 39(1) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner)

United Kingdom General Data Protection Regulation (the UK GDPR) Articles 5(1)(a) (Principles relating to the processing of personal data); 6(1)(f) (Lawfulness of processing)

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), (4)(d), (5), (10) and (14)(a), (c) and (d) (Terms relating to the processing of personal data).

Background

1. In December 2021, the Authority commissioned an [independent review](#)¹ into racism in Scottish cricket which led to the referral of 68 individual complaints to Cricket Scotland for further consideration.
2. On 28 April 2023, the Authority confirmed that the number of referrals passed to Cricket Scotland had increased to 87 (in relation to 53 allegations of racism) and [provided detail](#)² as to how these referrals were being reviewed.
3. On 5 September 2024, the Applicant made a request for information to the Authority. Among other things, they asked for:
 1. “For each of the 53 referral cases subsequent to the report looked at by the Investigations Team appointed by Cricket Scotland and overseen by [the Authority] in which year did the alleged incident take place (in yearly totals)?”
 2. “For each of the 53 referral cases (other than for the 5 going to a Conduct in Sport Panel and the 2 still being looked at) what was the specific reason given by the Investigations Team for recommending no further action was taken in each case?”
 3. “In relation to the 53 referral cases (a) what was the total number of complainants and (b) what was the maximum number of complaints by one complainant?”
4. The Authority responded on 3 October 2024, in the following terms:
 - for part 1, it stated that it did not hold a complete dataset, and it withheld a year-by-year breakdown of the incomplete information held under section 38(1)(b) of FOISA. It disclosed summarised totals of the incomplete information held for the periods 2002-2013 and 2014 onwards
 - for part 2, it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested. It explained that an independent Referrals Investigation Team submitted reports and recommendations directly to Cricket Scotland, noted that the Authority was not involved in decision-making and directed the Applicant to further information on the referral process
 - for part 3, it disclosed that there were 20 complainants and two further anonymous complaints in relation to part (a) of the request but withheld, under the exemptions in sections 38(1)(b) and 39(1) of FOISA, the maximum number of complaints by one complainant in relation to part (b) of the request.
5. On 24 October 2024, the Applicant wrote to the Authority requesting a review of its decision. They stated that they were dissatisfied with the decision because they considered:
 - the Authority’s oversight of the referral process, and its attendance at Cricket Scotland board meetings (and receipt of board documentation), meant that it held full datasets in relation to parts 1 and 2 of their request

¹ <https://sportscotland.org.uk/media-centre/full-independent-review-of-racism-within-scottish-cricket>

² <https://sportscotland.org.uk/cricket-review/changing-the-boundaries-immediate-recommendations-april-progress-update>

- the information withheld in relation to parts 1 and 3(b) of their request would not (with the exception of one “respondent” who had put their name into the public domain) identify a living individual and should, therefore, have been disclosed
 - the Authority was not entitled to apply the exemption at section 39(1) of FOISA in relation to part 3(b) of their request as the endangerment envisaged was based on supposition.
6. The Authority notified the Applicant of the outcome of its review on 22 November 2024, which upheld its original response. It also confirmed that the exemption in section 39(1) of FOISA had also been applied to the information withheld in relation to part 1 of their request.
 7. On 5 January 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. They stated that they were dissatisfied with the outcome of the Authority’s review because they considered the exemptions at sections 38(1)(b) and 39(1) of FOISA were not engaged and because they considered that the Authority held information that would fully satisfy parts 1 and 2 of their request.

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 21 January 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, and 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.
11. Further submissions were also sought and obtained from the Applicant.

Commissioner’s analysis and findings

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

Section 1(1) – General entitlement

13. 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 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.
14. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
15. 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.

16. 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) actually held by the public authority.

The Applicant's submissions

17. The Applicant considered that the Authority held a complete dataset in relation to part 1 of their request and held information falling within the scope of part 2 of their request.
18. The Applicant submitted that the Authority exercised "overall oversight" over referrals to Cricket Scotland, according to its own public statements. They further submitted that as a regular attendee at Cricket Scotland board meetings the Authority would receive all board packs (regardless of attendance at board meetings or not) which would contain the information requested.
19. The Applicant noted that the Authority had confirmed, in response to a prior FOISA request, that one member of staff held 673 emails relating to the referral process and that other officials held similar volumes of emails.
20. The Applicant considered that it was therefore not credible that the Authority would not hold a full list of the referrals, including details of complainants, respondents, incident dates and the nature of those incidents. They argued that any such absence of this information would render the Authority "completely negligent" in fulfilling its oversight duties.

The Authority's submissions

21. The Authority submitted that it only held some of the information requested by the Applicant in respect of part 1 of their request and none falling within the scope of part 2.
22. The Authority explained that while it had commissioned and paid for the review, this had been completed independently³ by a third-party body. A number of individual concerns identified during the review were referred to Cricket Scotland (referrals).
23. The Authority explained that the referrals investigation process was conducted independently and in confidence by a Referrals Investigation Team (RIT), which the Authority was not part of, which comprised a sports law firm, a race equality charity and an anti-racism campaign group.
24. The Authority submitted that the RIT passed reports to Cricket Scotland to action and that it did not receive these confidential reports as part of that process. It stated that the management of referrals was conducted by Cricket Scotland and the RIT. It explained that some decisions were made on an ad-hoc basis via email correspondence or separate, smaller, meetings.
25. The Authority explained that while it attended the "main" Cricket Scotland board meetings, it was not a member of the board and did not have decision-making authority, nor control of operational processes (including the handling of referrals or related investigations), and that Cricket Scotland would hold the full information requested by the Applicant.

³ <https://sportscotland.org.uk/media-centre/review-into-racism-in-scottish-cricket>

26. The Authority explained that given it played no part in the investigation process, it received no documents other than those sent as part of board packs (which it therefore held as a byproduct of being included in a Cricket Scotland email trail) and that not all referral documents were provided to it.
27. The Authority submitted that its Partnership Manager received “main” board packs from Cricket Scotland and had conducted searches for relevant information, given their status as Cricket Scotland’s key point of contact and their role as the Authority’s internal point of contact for the independent review’s [final report](#)⁴ and subsequent referrals exercise.
28. The Authority stated that its Partnership Manager had reviewed emails from various officers at Cricket Scotland, including all board papers and appendices received (which they specifically searched for information relating to the referrals process).
29. The Authority explained that its Partnership Manager had reviewed all Cricket Scotland board papers held for information relating to the referral process, including referral reports (of which it provided an example during the Commissioner’s investigation).
30. The Authority stated that its Partnership Manager had reviewed this information in detail, noting complaint reference numbers and the specific incidents described, to identify any reference to a specific date/incident, but submitted that it had not been possible to decipher the year of an incident in all cases (and that these were not specifically stated) in relation to part 1 of the Applicant’s request.
31. The Authority explained that it held a tracker document listing recommendations in relation to referrals made and that, per a pre-existing arrangement, Cricket Scotland was to report on the progress of 245 recommendations relating to referrals made.
32. The Authority submitted that the tracker document did not contain reasons why an individual referral related to “no disciplinary action” or otherwise break down the recommendations. It stated that it therefore held no information satisfying part 2 of the Applicant’s request.

The Commissioner’s view

33. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information requested (or that it holds no more information than it has identified and located in response to the request).
34. In this case, having considered all relevant submissions, and having paid regard to the referral investigation and public reporting arrangements between the RIT and Cricket Scotland, the Commissioner is satisfied that in relation to part 1 of the Applicant’s request:
 - the Authority took adequate and proportionate steps in the circumstances to establish if the information requested was held
 - the information held by the Authority, in respect of the specific detail of individual referrals, was limited to that information contained within board packs
 - the referral information held by the Authority (an example of which the Commissioner has seen) would not enable it to identify the year of an alleged incident in all cases.

⁴ <https://sportscotland.org.uk/media/pqflh3e1/changing-the-boundaries-independent-review-into-racism-in-scottish-cricket-report-1.pdf>

35. The Commissioner is therefore satisfied that the Authority does not (and did not, on receipt of the request) hold further information falling within part 1 of the Applicant's request.
36. While the Applicant may have believed and expected a complete data set to be held by the Authority (i.e. information confirming the year of each incident), the Commissioner is satisfied that this was not the case. Whether a public authority should hold more information which it does not hold is not a matter for the Commissioner to decide.
37. However, the Commissioner is not persuaded that the Authority does not hold at least some information that would satisfy part 2 of the Applicant's request. His [briefing on section 17 of FOISA](#)⁵ states:
- "Public authorities are not required to create information in order to answer a request. There's a distinction between creating new information, and compiling information. Where a request can be answered by compiling information from readily-available resources held by the public authority, this is not the same as creating new information."
38. Having reviewed a sample referral report provided to him by the Authority, which formed part of a board pack described in its submissions, the Commissioner considers that information within pages 3 and 4 of that report could be compiled in such a way as to enable the Authority to provide a "specific reason" (as requested in part 2 of the Applicant's request).
39. While the Applicant's request sought the specific reason given in "each case", the Commissioner does not accept that this means that their request can only be fulfilled if the specific reason is held for each and every referral. He considers it reasonable to interpret the request as being for the specific reason given in each case to the extent that information is held by the Authority – whether for some or all of the 53 referrals.
40. Based on his consideration of both the sample referral report and the submissions provided by the Authority, the Commissioner cannot uphold the Authority's claim that it holds no information relevant to part 2 of the Applicant's request.
41. The Commissioner therefore finds that the Authority was not entitled to give the Applicant notice, under section 17(1) of FOISA, that it did not hold the information requested in part 2 of their request.
42. The Commissioner requires the Authority to carry out fresh searches for information in relation to part 2 of the Applicant's request and issue them with a revised review outcome (giving particular attention to paragraph 38 of his decision notice). He requires the Authority to retain evidence of these searches in the event of a further appeal to his office.
43. The Authority also argued that the information it identified as falling within the scope of parts 1 and 3(b) of the Applicant's request was exempt from disclosure under sections 38(1)(b) and 39(1) of FOISA. The Commissioner will now consider this.

Section 38(1)(b) – Personal Information

44. Section 38(1)(b) of FOISA, read in conjunction with section 38(2A)(a) (or (b)), exempts information from disclosure if it is "personal data" (as defined in section 3(2) of the DPA 2018) and its disclosure would contravene one or more of the data protection principles set out in Article 5(1) of the UK GDPR.

⁵ <https://www.foi.scot/sites/default/files/2022-03/BriefingSection17Informationnoheld.pdf>

45. The exemption in section 38(1)(b) of FOISA, applied on the basis set out in the preceding paragraph, is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.
46. To rely on the exemption in section 38(1)(b) of FOISA, the Authority must show that the information is personal data for the purposes of the DPA 2018 and that disclosure of the information into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles in Article 5(1) of the UK GDPR.
47. In this case, the Authority applied the exemption in section 38(1)(b) of FOISA, as read with section 38(2A)(a), to numerical information falling within parts 1 and 3(b) of the Applicant's request that it considered to be personal data.

Is the information personal data?

48. The first question the Commissioner must address is whether the information is personal data for the purposes of section 3(2) of the DPA 2018. The two main elements of personal data are that:
 - the information must "relate to" a living person; and
 - the living individual must be identifiable.
49. Information will "relate to" a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus. An "identifiable living individual" is one who can be identified, directly or indirectly, by reference to an identifier (such as a name) or one or more factors specific to the individual (see section 3(3) of the DPA 2018).
50. The Court of Justice of the European Union looked at the question of identification in [Breyer v Bundesrepublik Deutschland \(C-582/14\)](#)⁶. The Court said that the correct test to consider is whether there is a realistic prospect of someone being identified. In deciding whether there is a realistic prospect of identification, account can be taken of information in the hands of a third party. However, there must be a realistic causal chain – if the risk of identification is "insignificant", the information will not be personal data.
51. Although this decision was made before the UK GDPR and the DPA 2018 came into force, the Commissioner expects that the same rules will apply. As set out in Recital (26) of the GDPR (the source of the UK GDPR), the determination of whether a natural person is identifiable should take account of all means reasonably likely to be used to identify the person, directly or indirectly.
52. In considering what is reasonably likely, the Recital states that all objective factors should be taken into account, such as the costs and amount of time required for identification, the available technology at the time of processing and technological developments. It confirms that data should be considered anonymous (and therefore no longer subject to the UK GDPR) when data subjects are no longer identifiable.
53. Public authorities responding to requests for numbers will therefore have to determine whether members of the public would be able (realistically) to identify individuals from the numbers, if they are disclosed.

⁶ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62014CJ0582>

The Authority's submissions on identifiability

54. The Authority considered that the information withheld from the Applicant in respect of parts 1 and 3(b) of their request comprised numerical data which related to identifiable living individuals for the purposes of section 3(2) of the Data Protection Act 2018.
55. The Authority noted the withheld numerical information was “often small” and referred to [Decision 012/2019](https://www.foi.scot/sites/default/files/Decision012-2019.pdf)⁷ of the Commissioner in support of its view that disclosure of the “small numbers” of referrals in certain years (which coincided with specific incidents at major cricketing events) would result in the realistic prospect of the identification of specific complainant(s) (in relation to incidents at these major events).
56. The Authority also referred to [Decision 156/2011](https://www.foi.scot/sites/default/files/Decision156-2011.pdf)⁸ of the Commissioner, which it considered supported its concerns regarding the risks of identification of living individuals through “triangulation”.
57. The Authority argued that disclosure of a full year-by-year breakdown of the incomplete information it held, alongside the number of complaints (and complainants already disclosed in response to part 3(a) of the Applicant’s request), could lead to identification of individuals. However, it recognised that disclosure of the part 3(b) information in isolation (i.e. absent the part 1 information) would not identify a living individual.
58. The Authority submitted that, when considered together, disclosure of the information withheld in response to parts 1 and 3(b) of the Applicant’s request presented a real risk of “links” being made to living individuals – particularly when news articles which referenced specific dates, high-profile cricketing events and individuals (including those who made their complaints public) were taken into account.
59. In that regard, the Authority referred the Commissioner to three newspaper articles and several posts on social media platform X (formerly Twitter) which it considered could contribute to the identification of specific living individuals.
60. The Authority also noted that, notwithstanding the likelihood of identification of individuals by the broader cricketing community, the identity of the Applicant (whom it considered had particular insight in this case) also had a potential bearing on the identifiability of individuals in this case.
61. In all of the circumstances, the Authority argued that disclosure of the information withheld in response to parts 1 and 3(b) of the Applicant’s request would enable the Applicant (or others) to connect this information – due to understanding that certain events had taken place in specific years – to create a “narrative” that specific individuals were responsible for “x” complaints.

The Applicant's submissions on identifiability

62. The Applicant considered that the complaints, and complainants, were not (other than one individual) in the public domain.
63. The Applicant disputed that the “unspecified” social media posts referred to in the Authority’s review response would contribute to the identification of individuals and argued that it had, in all, failed to provide a rational argument as to why individuals were identifiable.

⁷ <https://www.foi.scot/sites/default/files/Decision012-2019.pdf>

⁸ <https://www.foi.scot/sites/default/files/Decision156-2011.pdf>

64. The Applicant therefore submitted that none of the information requested related to identified or identifiable living individuals and therefore should have been disclosed.

The Commissioner's view

65. The Commissioner has carefully considered the submissions of both parties. Having done so, he is not satisfied that the Authority has provided him with sufficiently compelling arguments to allow him to conclude that disclosure of the information requested would lead to the identification of a living individual.
66. In view of his own searches, information already disclosed to the Applicant and media reporting signposted by the Authority, the Commissioner agrees that disclosure of the withheld information would permit assumptions to be made regarding the identity of complainants in a number of given years and the identity of the individual responsible for the greatest number of complaints.
67. However, having reviewed the withheld information, the Commissioner is not satisfied that disclosure of this information would – even when the above context (including what information is, or may be, known by the Applicant and others) is taken into account – allow for the confirmation or refutation of such assumptions.
68. The Commissioner would note here that the Authority's submissions do not specify any living individuals which it considered would be conclusively identifiable from disclosure of the withheld information. He has also not identified any such individuals from his own searches. (As stated earlier, the Authority recognised that disclosure of the information withheld in relation to part 3(b) of the Applicant's request would not – in isolation – lead to the identification of a living individual.)
69. The Commissioner accepts that disclosure of the totality of the information withheld in response to parts 1 and 3(b) of the Applicant's request would permit a certain degree of speculation. However, as he is not satisfied that living individuals can be identified from disclosure of the withheld information (either in isolation or when considered together alongside other information), the Commissioner cannot find that the withheld information constitutes personal data for the purposes of section 3(2) of the DPA 2018.
70. The Commissioner must therefore find that the Authority was not entitled to withhold that information under section 38(1)(b) of FOISA.
71. As the Authority also relied on the exemption in section 39(1) of FOISA to withhold that information, the Commissioner will go on to consider the application of that exemption below.

Section 39(1) of FOISA – Health, safety and the environment

72. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual (which may include a group of people). This is a qualified exemption and is subject to the public interest test required by section 2(1)(b) of FOISA.
73. As the Commissioner notes in [his briefing on the exemption](https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment_2023.pdf)⁹, section 39(1) of FOISA does not contain the usual harm test. Instead of the "substantial prejudice" test found in many other harm-based exemptions in Part 2 of FOISA, this exemption refers to the

⁹ https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment_2023.pdf

"endangerment" of health or safety. This test is less demanding than the "substantial prejudice" test.

The Applicant's submissions

74. The Applicant's arguments as to why they considered the endangerment claimed would not result from disclosure of the information are largely set out at paragraphs 5, 62, 63 and 64. The Commissioner will not reproduce those submissions here, but will fully consider them in what follows.
75. The Applicant further submitted that they did not consider disclosure of numerical data would identify individuals and cause harm to any individual's physical or mental health. They considered such a claim was based on supposition and was unsupported by rational argument or medical or other substantive evidence.

The Authority's submissions

76. The Authority submitted that individuals who had provided (in confidence) personal details of incidents of racism linked to their cricketing careers during the independent review and referral process would be harmed by disclosure of the withheld information, particularly given all participants had been assured of their anonymity.
77. The Authority explained that a number of individuals had described (via social and mainstream media) the profound mental harm and distress caused to them by racism in Scottish cricket, and it provided examples of this. However, it stated that it did not know if these individuals were part of the referral process (unless the individuals had themselves declared this).
78. The Authority said that a named campaign group had provided direct mental health support to some individuals (at their request) involved in the independent review and referral process.
79. The Authority explained that the risk of further endangerment to the mental health of those involved that would result from disclosure of the withheld information was real. It again directed the Commissioner to specific social and mainstream media posts related to specified individuals, which referred to mental health and suicide prevention.
80. The Authority submitted that disclosure of the withheld information (which it considered would identify individuals who had participated in the referral process) would be traumatic (with the potential to lead to self-harm) and would cause "mistrust" in Cricket Scotland and other bodies, which could result in "irreparable damage" to Cricket Scotland's relationship with the cricketing community.

The Commissioner's view

81. The phrase "endanger" is broad enough to apply where there is a threat, direct or indirect, to the safety of a person. Since the exemption does not specify that any threat should be imminent before it applies, the threat may be either immediate, or one which would foreseeably arise in the future. However, the Commissioner believes that for endangerment to be considered likely, there must be some well-founded apprehension of danger, such that the prospect of harm could be regarded as a distinct possibility.
82. The central question when considering the application of the exemption in section 39(1) of FOISA is whether disclosure of the specific information in question would, or would be likely to, endanger the physical or mental health or the safety of an individual (or group).

83. The Commissioner has considered carefully the endangerment which might result to the physical and mental health of specific living individuals suggested by the Authority's submissions. He has also considered the Authority's argument that the health and safety of all individuals who described incidents of racism via the independent report and referral process (on the basis of anonymity) would be similarly endangered.
84. The Commissioner recognises that the topic underlying the Applicant's request is sensitive. He accepts that disclosure of any information relating to that topic may result in increased attention or speculation, which may be negative, regarding certain individuals believed to have been involved in the referral process.
85. However, having considered the withheld information and the submissions provided by the Authority, the Commissioner is not satisfied that disclosure of the withheld information would, or would be likely to, increase the likelihood of harm that already exists.
86. The Commissioner has already found that disclosure of the information requested would not lead to the identification of a living individual. He therefore does not accept that to disclose that "x" number of complaints had been made by an unidentified complainant in a given year or that one unidentified complainant (of a group of a complainants) had made "x" complaints overall would, or would be likely to, result in the harm required for section 39(1) of FOISA to be engaged. He also does not accept that disclosure would, or would be likely to, increase the likelihood of harm to complainants more generally.
87. While he is sensitive to the potential impact of the increased attention and speculation that may follow from disclosure of the withheld information, the Commissioner cannot accept that this alone – particularly in the absence of the identification of any living individual – is sufficient reason to maintain the exemption in section 39(1) of FOISA. In fact, he considers that if he were to find that that the exemption should be maintained then it would be entirely plausible that this would be followed by the same or similar attention and speculation being directed at those believed to have been involved in the referral process.
88. In all of the circumstances, the Commissioner finds that disclosure would not be likely to endanger the physical or mental health or the safety of any individual (or group). He therefore finds that the exemption in section 39(1) of FOISA has been wrongly applied by the Authority.
89. Given that the exemption in section 39(1) of FOISA was wrongly applied, the Commissioner is not required to consider the public interest test in section 2(1)(b) in terms of section 39(1).

Decision

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

The Commissioner finds that the Authority complied with Part 1 of FOISA by identifying all information it held falling within the scope of part 1 of the Applicant's request.

However, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA by:

- incorrectly applying section 17(1) to part 2 of the Applicant's request and informing them that it did not hold the information requested

- wrongly withholding information under the exemptions in sections 38(1)(b) and 39(1) of FOISA in relation to parts 1 and 3(b) of the Applicant's request.

The Commissioner therefore requires the Authority to:

- carry out adequate, proportionate searches for information falling within part 2 of the Applicant's request (and to retain evidence of these searches)
- reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA)
- disclose to the Applicant the information it was not entitled to withhold in relation to parts 1 and 3(b) of the Applicant's request.

by **10 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.

David Hamilton
Scottish Information Commissioner

26 August 2025