



Scottish Information
Commissioner
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Decision Notice 270/2025

Meetings between the Executive Group of the SPS and the Scottish Ministers.

Authority: Scottish Prison Service

Case Ref: 202500659

Summary

The Applicant asked the Authority for all reports to and minutes of meetings between any member of its Executive Management Group and the Scottish Ministers. The Authority informed the Applicant that it did not hold the information requested. During the investigation, the Authority amended its position and confirmed that it did hold the information requested. The Commissioner required the Authority to issue the Applicant with a new review outcome in which it confirmed it held the information requested and notified them of the exemptions it was now relying on.

Relevant statutory provisions

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

Background

1. On 22 January 2025, the Applicant made a request for information to the Authority. He asked for:

“All reports to and minutes of meetings between any member of the Executive Management Group of SPS and the Scottish Ministers and/or any representative of the Scottish Government from the period 1 January 2024 to 22 January 2025.”

2. The Authority responded on 19 February 2025. It issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

3. On 7 March 2025, the Applicant wrote to the Authority requesting a review of its decision as he did not accept that the Authority did not hold any relevant information. The Applicant commented that during the time period he had specified, the SPS had sent representatives to the Scottish Parliament and to its committees, and topics discussed in the Scottish Parliament suggested that some form of meeting between the Authority and the Scottish Ministers had taken place.
4. The Authority notified the Applicant of the outcome of its review on 20 March 2025, which fully upheld its original decision.
5. On 29 April 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because it was a matter of public record that meetings between the Authority and the Scottish Ministers took place in the time period specified.

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 21 May 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. These related how the Authority had established that it did not hold the requested information.

Commissioner's analysis and findings

9. 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

10. 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. The qualifications contained in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. During the investigation, the Authority reconsidered its position and confirmed that it did hold the information requested by the Applicant and therefore it was no longer relying on section 17(1) of FOISA.

13. As the Authority has withdrawn its reliance on section 17(1) of FOISA, the Commissioner must find that the Authority was not entitled to issue the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
14. The Commissioner now requires the Authority to provide the Applicant with a revised review outcome (in terms of section 21(4)(b) of FOISA) that notifies the Applicant of its updated position. In its revised review outcome, the Authority should either disclose the information it holds in full or notify the applicant of any exemption it is relying on to withhold the information, explaining in detail why the Authority considers the exemption to be relevant. This will enable the Applicant to make a new application in which he can fully challenge the Authority's reasons for withholding information from him.

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 was not entitled to issue the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

The Commissioner requires the Authority to issue the Applicant with a new response to their requirement for review, in terms of section 21(4)(b) of FOISA, by **22 December 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.

Jennifer Ross
Deputy Head of Enforcement

05 November 2025