



Scottish Information
Commissioner
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Decision Notice 015/2026

Statistics on Subject Access Requests (SAR) submitted to the Authority – failure to respond

Authority: Highland Council
Case Ref: 202501434

Summary

The Applicant asked the Authority for information about the statistics on Subject Access Requests (SARs) submitted to the Authority. This decision finds that the Authority failed to respond to the request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 29 May 2025.
2. The Authority did not respond to the information request.
3. On 30 June 2025, the Applicant wrote to the Authority in respect of its failure to respond.
4. The Applicant did not receive a response to her requirement for review.
5. The Applicant wrote to the Commissioner on 23 August 2025, stating that she was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 25 September 2025.
8. The Commissioner received submissions from the Authority on 17 December 2025. These submissions are considered below.
9. The Authority explained that at the time the request was submitted, the FOI team was operating with vacancies and a number of a newly recruited staff which impacted its ability to respond, and that this was exacerbated by annual leave during the summer. It further stated that it developed a backlog of cases and then received an unusually high number of appeals at the same time.
10. The Authority stated that the Applicant's request required the provision of data which was not held in the format requested but it could, to a large extent, be created through the analysis of the information it held in its internal system. It noted that this analysis required significant time and that it had been unable to carry it out because of the continuous flow of new requests. It clarified that the time required was not enough to engage the fees regulations.
11. The Authority confirmed that it had now filled all the vacant posts and was working to improve its compliance with the statutory timescales. The Authority confirmed that it would work towards providing the Applicant with a response.
12. 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.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
14. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
15. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
16. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
17. The Commissioner notes the Authority's submissions on the pressures it was experiencing at the time it received the request. He would remind authorities that under paragraph 1.1.1 of 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), FOI should be recognised as a specific statutory corporate

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

function within an authority. As such, it should receive the necessary levels of organisational support at both strategic and operational levels, as well as sufficient resource, to ensure compliance with Scotland's access to information regimes.

18. The Commissioner would also remind authorities that under paragraph 1.4.1 of the Code, Authorities should have in place robust arrangements to ensure that staff absence, whether planned or unplanned, does not affect their ability to respond to requests for information, and requests for review, within statutory timescales.
19. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. The Commissioner requires the Authority to issue a response **by 13 March 2026**.

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.

Jill Walker
Deputy Head of Enforcement

27 January 2026