



Scottish Information  
Commissioner  
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# Decision Notice 288/2025

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## Significant Adverse Event Review reports

Authority: Fife Health Board  
Case Ref: 202501562

### Summary

The Applicant asked the Authority for copies of Significant Adverse Event Review reports meeting relating to specific circumstances in each of the last four full financial years. The Authority responded to the request and withheld the reports on the grounds that they were confidential and third party personal data. The Commissioner investigated and found that the Authority failed to comply with FOISA in responding to the information request made by the Applicant. He required the Authority to carry out a revised review outcome.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 20(1) and (3) (Requirement for review of refusal etc); 21(4) (Review by a Scottish public authority); 47(1) and (2) (Application for decision by Commissioner); 50(1)(a) (Information notices).

### Background

1. On 3 April 2025, the Applicant made two separate requests (request A and request B) for information in two separate emails to the Authority. He asked for:
  - “a copy of all final Significant Adverse Event Review (SAERs) reports produced for SAERs commissioned by [the Authority] in each of the last four full financial years which relate to stillbirth, neonatal, extended perinatal, post- neonatal and infant deaths.” (request A)

- “In total, how many Significant Adverse Event Review (SAERs) were commissioned by [the Authority] in each of the last four full financial years which relate to stillbirth, neonatal, extended perinatal, post- neonatal and infant deaths. Please then breakdown these figures, again for each of the last four full financial years, by each category (stillbirth, neonatal, extended perinatal, post-neonatal and infant deaths).” (request B)
2. The Authority responded to request A on 8 April 2025. It withheld the information requested under the exemptions in sections 36(1) and 38(1)(b) of FOISA.
  3. The Authority responded to request B on 29 April 2025. It disclosed some information and withheld other information under the exemption in section 38(1)(b) of FOISA.
  4. On 8 May 2025, the Applicant wrote to the Authority requesting a review of its decision relating to copies of the SAERs (i.e. request A). He stated that he was dissatisfied with the decision because he believed there was a way to disclose the information requested that would not identify anyone. He also referred the Authority to [Decision 036/2012](#)<sup>1</sup> of the Commissioner, which he said showed the clear public interest in disclosing this type of information.
  5. The Authority notified the Applicant of the outcome of its review on 20 May 2025. It said that it was applying the exemptions in sections 25(1) and 38(1)(b) to “some of the data”. More specifically:
    - it confirmed that it was continuing to withhold some information relating to the number of SAERs (i.e. request B) under the exemption of section 38(1)(b) of FOISA
    - it said that copies of SAERs were “highly identifiable” and “of unique situations” and it was therefore unable to share these more widely
    - it explained that it published an Annual Duty of Candour Report for any adverse events that require a Duty of Candour (which were available on its website) and linked to [a statement from the Commissioner](#)<sup>2</sup> on the publication of SAERs.
  6. The Applicant initially wrote to the Commissioner on 28 May 2025, applying for a decision in terms of section 47(1) of FOISA in relation to request A. The Commissioner deemed this application invalid.
  7. On 8 September 2025 the Applicant provided further information to the Commissioner and applied for a decision in terms of section 47(1) of FOISA in relation to request A. He stated that he was dissatisfied with the outcome of the Authority’s review for the following reasons:
    - it had not given due consideration to how some of the information requested, such as the “lessons learned, could be disclosed
    - he considered that disclosure would be in the public interest
    - previous decisions of the Commissioner showed that it was possible to disclose redacted SAER reports in certain circumstances, but the Authority had not demonstrated that it had considered this.

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<sup>1</sup> <https://www.foi.scot/decision-0362012>

<sup>2</sup> <https://www.foi.scot/statement-publication-significant-adverse-event-review-reports-nhs>

## **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. He remains satisfied that this is the case.
9. On 12 September 2025, the Authority was notified in writing that the Applicant had made a valid application.
10. At the same time, the Commissioner issued the Authority with an Information Notice, under section 50(1)(a) of FOISA, requiring it to provide him with the withheld information relating to request A, to answer questions relating to its handling of that request and to explain and justify any exemptions it wished to apply to information falling within the scope of that request.
11. On 20 October 2025, the Authority responded that it had not received a requirement for review in relation to request A. The Commissioner confirmed that the Applicant had and explained why. However, the Authority maintained that the Applicant had not and invited the Commissioner to withdraw the Information Notice to allow it to voluntarily conduct a review. In the circumstances, and for reasons he will elaborate on later, the Commissioner agreed to withdraw the Information Notice.
12. 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 provide any further comments it wished to make in addition to those it had already made as part of the correspondence relating to the Information Notice issued by the Commissioner. The Authority provided further comments.

## **Commissioner's analysis and findings**

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

### ***Validity of the application***

#### ***The requirement for review***

14. As stated above, the Authority maintained that the Applicant had not submitted a valid requirement for review in relation to request A.
15. Section 20(1) of FOISA provides that a person who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information may require it to review its actions and decisions in relation to that request.
16. Section 20(3) of FOISA provides that a requirement for review must be in writing or some other form of permanency, it must state the name of the applicant and an address for correspondence, and it must specify the request for information to which the requirement for review relates and the matter which gives rise to the applicant's dissatisfaction.
17. The Applicant's submitted his requirement for review for request A on 8 May 2025. He did so via email, responding to the Authority's response to request B – meaning that the subject line of his email contained the Authority's FOI reference number for request B. However, the Commissioner considers that the wording of the Applicant's requirement for review was clear that it was intended as a requirement for review of the Authority's response to request A:

“Please accept this email as a request for an internal review **with regards to copies of the SAERs**. I believe there is a way to release the information that would not identify anyone, which would be our goal too. I would also refer you to the information commissioner's Decision 036/2012... which shows the clear public interest in releasing this type of information.” [emphasis added]

18. In response to the Commissioner advising (for the reasons set out in the preceding paragraph) that the Applicant had submitted a valid requirement for review in relation to request A, the Authority stated that it was clear that the Applicant had not requested a review of that request. It disagreed that it was merely “desirable” to provide the correct FOI reference number and argued that it was a “reasonable request to provide an acceptable service and ensure [that it provided information] for the correct case number.”
19. The Commissioner agrees that it is helpful for applicants to use the reference numbers provided by authorities – failure to do in this case has caused confusion that could have been avoided. For the sake of clarity, he would encourage applicants to use these reference numbers and to otherwise follow the guidance in his [Tips for Requesters](#)<sup>3</sup>. However, as stated above, he is nevertheless satisfied that the wording of the Applicant’s requirement for review was clear that it was intended as a requirement for review of the Authority’s response to request A.
20. The Commissioner therefore finds that the Applicant submitted a valid requirement for review in relation to request A.

#### *The review outcome*

21. As stated above, the Authority issued a review outcome to the Applicant on 20 May 2025.
22. As part of the Applicant’s initial application that he deemed invalid, the Authority had previously explained to the Commissioner that the Applicant’s requirement for review contained an “additional request” for copies of SAERs (i.e. request A) which was substantively different to his original request (i.e. request B).
23. The Authority said that it was therefore not required to consider the provision of the copies of the SAERs as this was not part of the Applicant’s original request (i.e. request B). However, to be supportive, it provided a link to the Commissioner’s statement on the publication of SAERs.
24. In fact, as stated above, the Applicant had already submitted a request for copies of the SAERs (i.e. request A), and the Authority had already provided an initial response to that request.
25. During the investigation, the Authority said that it had “not had the opportunity” to conduct a review in relation to request A and, as stated above, it offered to voluntarily conduct a review.
26. While the Authority’s review outcome wrongly considers the information in request B, the Commissioner considers it to be a technically valid (though deficient) review outcome in respect of the Applicant’s requirement for review in relation to request A.
27. The Commissioner is therefore satisfied that the Applicant’s application to him for a decision in respect of request A is valid. Given the review outcome issued by the Authority is deficient (and he agrees that the Authority did not, at review stage, substantively consider the

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<sup>3</sup> [https://www.foi.scot/sites/default/files/2022-03/Tips\\_for\\_Requesters.pdf](https://www.foi.scot/sites/default/files/2022-03/Tips_for_Requesters.pdf)

information requested in request A), he requires it to issue the Applicant with a revised review outcome in relation to that request.

28. In doing so, the Commissioner requires the Authority to:
- consider carefully the terms of the request and ensure that its interpretation of the request is reasonable and fully addresses the request
  - take adequate and proportionate steps to establish what information is held, using appropriate search terms and searching the locations and mediums where relevant information may be held
  - ensure it clearly identifies any information that is being withheld and justifies and explains why that information is being withheld
  - consider, in assessing the information for disclosure, whether the reports (or any part of them) can be disclosed in a redacted form – particularly, whether any “lessons learned” information can be disclosed.
29. The Commissioner would also urge public authorities to carefully consider the terms of requests and requirements for review. Where either of these is genuinely unclear, public authorities should seek clarification. While in this case the Commissioner is satisfied that the Applicant’s requirement for review clearly related to request A, it was open to the Authority to seek clarification rather than proceeding on the misapprehension set out above.

#### ***Further comments***

30. As stated above, the Commissioner withdrew the Information Notice he had issued to the Authority after it maintained that it did not consider that the Applicant had submitted a valid requirement for review in relation to request A.
31. For an application for a decision to the Commissioner to be valid, the requirement for review relating to the request being appealed must be valid. For the reasons previously stated, the Commissioner is satisfied that the Applicant’s application to him for a decision in relation to request A is valid. The question of validity is fundamental: the Commissioner has no power to investigate an invalid application and any decision issued in relation to an invalid application would be unenforceable.
32. As stated above, the Authority offered to voluntarily conduct a review in relation to request A while maintaining that the Applicant’s requirement for review in relation to that request was not valid. The Commissioner accepts that the Authority was trying to be helpful, but he did not consider it appropriate to accept the Authority’s offer to voluntarily conduct a review in these circumstances. Instead, he has elected to require the Authority to conduct a revised review outcome in relation to request A.
33. The Commissioner appreciates that this decision may frustrate the Applicant who appealed to him for a substantive decision on the information requested in request A. However, in the circumstances, he considers a decision that clarifies and confirms the validity of the Applicant’s requirement for review in relation to request A (and his application to the Commissioner for a decision in relation to that request) is the most appropriate course of action considering the Authority’s position.
34. This has been a somewhat shambolic case and the Commissioner would expect there to have been much more care taken in its handling by the Authority. While he accepts the

Authority has been trying to be helpful, it does raise questions about the Authority's processes and practice.

## **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's review outcome in relation to the Applicant's requirement for review for request A failed to meet the requirements of section 21(4) of FOISA.

The Commissioner therefore requires the Authority to carry out a revised review and inform the Applicant of the outcome (in terms of section 21 of FOISA), by **23 January 2026**. In doing so, the Authority must have regard to the conditions set out in paragraph 28.

## **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**

**09 December 2025**