



Scottish Information
Commissioner
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Decision Notice 309/2025

NHS vaccinators – overpayments

Authority: Greater Glasgow and Clyde Health Board

Case Ref: 202500779

Summary

The Applicant asked the Authority for information relating to overpayments to NHS vaccinators as a result of a change to their rate of pay. The Authority informed the Applicant that it did not hold the information requested. During the Commissioner's investigation, the Authority located the information requested and disclosed it to the Applicant. The Commissioner investigated and found that the Authority had failed to comply with FOISA in responding to the Applicant's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 22 February 2025, the Applicant made (by post) a five-part request for information to the Authority in relation to NHS vaccinators and overpayments resulting from a change to their rate of pay. The request is set out in full in Appendix 1.
2. The Authority responded (by post) on 29 March 2025. It apologised for failing to issue its response within statutory timescales and informed the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested.

3. On 1 April 2025, the Applicant wrote to the Authority requesting a review of its decision. They noted that the Authority had failed to comply with statutory timescales and otherwise stated that they were dissatisfied with the Authority's decision because:
 - they considered that the Authority held the information requested and had failed to carry out proper searches in response to their request
 - they had been adversely affected by the change to vaccinators' rate of pay and had received various correspondence from Authority officials (which they specified) regarding repayment of an overpayment, which clearly contradicted the Authority's position that it did not hold the information requested.
4. The Authority notified the Applicant of the outcome of its review on 30 April 2025. It provided further explanation in response to the points made by the Applicant in their requirement for review, but it otherwise upheld its initial response without modification.
5. On 14 May 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 for the reasons set out in their 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 3 June 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 related to:
 - its interpretation of the request
 - the searches it had undertaken in response to the request and the requirement for review
 - the information referred to by the Applicant in their requirement for review, which indicated that it held some information relevant to their request
 - its failure to respond to the request within the statutory timescale laid down by FOISA.
9. Further submissions were also sought and received from the Applicant.
10. During the investigation, the Authority issued a fresh review outcome to the Applicant in which it took the following steps:
 - it disclosed the information requested to the Applicant in full and apologised for its failure to do so earlier
 - it explained that its payroll team did not hold this information, which had been located in a SharePoint site created to manage all COVID vaccinator recruitment (and which sat outwith conventional recruitment and management processes).
11. The Applicant subsequently confirmed that they still wished to receive a decision from the Commissioner in respect of the Authority's position in its original review outcome that it did

not hold the information requested and its failure to issue its initial response within statutory timescales. The Commissioner sought (and thereafter received) further submissions from the Authority on that basis.

Commissioner's analysis and findings

12. 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

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. The qualifications contained in section 1(6) are not applicable in this case.
14. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. 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.
15. As rehearsed earlier, during the investigation, the Authority reconsidered its position and confirmed that it did hold the information requested by the Applicant and disclosed this information to them, in full.

The Applicant's submissions

16. The Applicant stated that their requirement for review had provided all of the information (including the details of a relevant letter from the Authority's payroll team, and the names of various officials who had been involved in related matters) required to locate the information requested. They also noted that the Authority's review outcome confirmed that it had considered this information when it upheld its reliance on section 17(1) of FOISA.
17. The Applicant submitted that it was an "amazing coincidence" that following the involvement of the Commissioner the Authority was able to locate (and disclose) the information requested, despite "no further details" having been provided in addition to those set out in their requirement for review.
18. In all, the Applicant considered that the Authority's failure to locate and disclose the information requested until during the Commissioner's investigation to be indicative of wilful negligence, incompetence or an intent to withhold information (or a combination of these factors) on the part of the Authority.

The Authority's submissions

19. The Authority explained that, on receiving the Applicant's requirement for review, it had interrogated its core payroll system again, which held all payroll records for contracted staff. It submitted that, given the way information was stored in that system, it had considered that it did not hold the information requested.
20. The Authority said that it was only upon being contacted by the Commissioner during his investigation and undertaking a further consideration of the information it held, that it became apparent that it should have undertaken a search of a SharePoint site holding information on

“the COVID-19 vaccinator workforce”, which was entirely separate from its standard payroll system. It confirmed that the information requested (which it subsequently disclosed to the Applicant) was held in that SharePoint site.

The Commissioner’s view

21. As stated above, the Authority’s original review outcome upheld its decision to issue the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested. However, during the Commissioner’s investigation, it located the information requested and disclosed it to the Applicant.
22. The Commissioner must therefore find that in failing to take adequate steps to identify, locate and provide the requested information (by the date of the review outcome, at the latest), the Authority failed to comply with section 1(1) of FOISA. In these circumstances, the Authority was incorrect to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
23. Given that the Authority has now located and disclosed the information requested to the Applicant, the Commissioner does not require the Authority to take any action in respect of this failure in response to the Applicant’s application. However, in the circumstances, the Commissioner must comment further on the Authority’s handling of the Applicant’s request.

Handling matters

24. While the Commissioner welcomes that the Authority identified and disclosed the information requested during his investigation, he must reiterate that it should have done so by the date of the original review outcome (at the latest).
25. The Commissioner acknowledges the Authority’s position that the information requested was not held in the expected location. However, given the nature of the request and the information provided by the Applicant (particularly in their requirement for review), he finds it difficult to understand why the Authority could not locate the information requested until during his investigation.
26. The Commissioner understands the Applicant’s dissatisfaction that the Authority was unable to locate the information requested, particularly given the level of detail they provided in their requirement for review. In fact, he cannot see what more the Applicant could have done to enable the Authority to locate the information requested.
27. While the Commissioner is not persuaded that the Authority’s failure to locate the information requested at that stage was wilful or intentional, he considers that it underlines the importance of public authorities undertaking adequate and proportionate searches (i.e. not simply searching in the location where they might expect information to be held) and of fully engaging with the dissatisfaction expressed (and with any evidence provided that might suggest the initial decision is incorrect).
28. In other words, the purpose of the review stage in FOI law is to provide authorities with the opportunity to reconsider their handling of an initial information request prior to an application being made to the Commissioner (if necessary). As is evident in this case, failure to carry out adequate and proportionate searches in response to information requests and to engage fully with the dissatisfaction expressed in the requirement for review undermines the confidence of requesters in public authorities.
29. The Applicant also raised dissatisfaction in their application to the Commissioner that the Authority’s initial response to their request was late.

30. 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.
31. The Authority estimated that it had posted its initial response to the Applicant no earlier than the 21st working day after the date of receipt of the Applicant's request, but no later than the 23rd working day (given the date the Applicant received it).
32. It is therefore a matter of fact that the Authority failed to issue its initial response within the statutory timescales set out in section 10(1) of FOISA. The Commissioner notes that the Authority apologised for its failure to adhere to statutory timescales at the time it issued its initial response. He would urge the Authority to take steps to ensure that it complies with the statutory timescales laid down by FOISA in future.

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 failed to comply with Part 1 of FOISA by wrongly notifying the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Given that the Authority has now located and disclosed the information requested to the Applicant, the Commissioner does not require the Authority to take any action in response to this failure in response to the Applicant's application.

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

18 December 2025

Appendix 1: Information request dated 22 February 2025

“... Up until 8 April 2022, vaccinators within NHS GG&C were paid at their substantive AFC rate of pay. From 8 April 2022 it became the case that all vaccinators were to be paid at AFC Band 5 rate. This meant that a number of vaccinators were to be paid at a reduced rate from 8 April 2022. Some or all of those affected continued to be paid for a period after 8 April 2022 at the their pre-8 April 2022 substantive AFC rate of pay. This resulted in a number of vaccinators being overpaid until the rates were adjusted to the AFC Band 5 rate.

The information I require is -

1. The number of vaccinators whose rate of hourly pay was affected by the decision to change the rate from 8 April 2022 to AFC Band 5 rate.
2. The number of those vaccinators affected by the change who continued to be paid for a period of time after 8 April 2022 at their pre-8 April 2022 hourly rate.
3. The number of vaccinators who have been asked to repay the excess amount of pay received by them after 8 April 2022 by reason of the reduction in their hourly rate not being applied.
4. The date(s) when such vaccinators were first asked to repay their overpayments.
5. The number of vaccinators asked to make repayments who have, either by actual repayment or deduction from NHS salaries, -
 - a. made the repayment in full; and
 - b. are currently making the repayment in instalments.

...”