



Scottish Information
Commissioner
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Decision Notice 030/2026

Fitness to Teach – allegations of dishonesty

Authority: General Teaching Council for Scotland
Case Ref: 202501076

Summary

The Applicant asked the Authority for information about its Fitness to Teach referrals and investigations. The Authority informed the Applicant that it did not hold some of the information requested and that it would cost more than £600 to provide some of the other information requested and it was therefore not obliged to respond to that request. The Commissioner investigated and found that the Authority partially complied with FOISA in responding to the Applicant's requests. He required the Authority to carry out a fresh review and to provide the Applicant with a revised review outcome in respect of one request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 12 (Excessive cost of compliance); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (projected costs) and 5 (excessive cost –prescribed amount).

Background

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

- i. What criteria does [the Authority] use to determine whether a referral meets the threshold for a Fitness to Teach investigation?
- ii. Has [the Authority] ever investigated a Fitness to Teach referral based on alleged dishonesty under oath? If so, how many such cases have been considered in the last five years?
- iii. What external legal or regulatory bodies, if any, does [the Authority] consult when assessing whether to investigate a referral involving potential criminal conduct?
- iv. What training, if any, is provided to [the Authority's] Regulatory Investigations staff regarding the assessment of referrals involving alleged dishonesty or criminal offences?
- v. Does [the Authority] consider decisions made by its Regulatory Investigations team to be equivalent to those made by a Fitness to Teach Panel or Fitness to Teach Officer? If so, on what basis?
- vi. Does [the Authority] consider perjury to be 'relevant conduct' for the purposes of a Fitness to Teach investigation?
- vii. Does [the Authority] take the position that perjury does not meet the 'level of seriousness' required to raise concerns about a registrant's fitness to teach?
- viii. If Police Scotland were to investigate an allegation of perjury against a registered teacher, what internal policies or guidelines would [the Authority] rely on to determine whether to investigate the same matter?
- ix. If Police Scotland were to submit a report to the Procurator Fiscal regarding a registered teacher's alleged perjury, would [the Authority] still maintain a decision not to investigate? If so, what internal policies, procedures, or guidance would support this decision?
- x. On what basis can [the Authority's] Regulatory Investigations team assure a referred teacher that 'no further action will be taken' when a judicial review could ultimately compel [the Authority] to act?
- xi. Is [the Authority] concerned that the cost of judicial review may discourage individuals from challenging a Regulatory Investigations decision not to investigate?

2. The Authority responded on 7 April 2025 in the following terms:

- for requests i, viii and ix, it said the information requested was exempt under section 25(1) of FOISA on the basis it was otherwise accessible
- for request ii, it applied section 12(1) of FOISA on the basis that the cost of responding to it would exceed the upper cost limit
- for requests iii, iv, v, vi, vii, x and xi, it issued a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

3. On 21 April 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision for the following reasons:

- for requests i, viii and ix, he disagreed with the application of the exemption in section 25(1) of FOISA. Specifically, he considered clarification on how the Threshold Policy was

interpreted in practice to be relevant and he said that if internal documents and decision-making frameworks existed to support this, they should be disclosed.

- for request ii, he disagreed that section 12(1) of FOISA applied and suggested that the time estimate was excessive and potentially disproportionate.
 - for requests iii, iv, v, vi, vii, x and xi, he suggested that the information requested was held and that “even partially relevant” information should be disclosed in response to these questions.
4. The Authority notified the Applicant of the outcome of its review on 20 May 2025, which fully upheld its original decision without modification.
 5. On 5 July 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority’s review because he disagreed with the Authority’s application of section 12(1) of FOISA to request ii and section 17(1) of FOISA to requests iii, iv, v, vi, vii, x and xi of his request.

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 1 August 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. The Commissioner’s decision notice is limited to considering the Authority’s handling of requests ii, iii and iv of the Applicant’s request. This is because the Applicant did not appeal the Authority’s reliance on section 25(1) of FOISA for requests i, viii and ix and the Commissioner could not be satisfied, in the circumstances, that questions v, vi, vii, x and xi constituted requests for recorded information.
9. 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 application of section 12(1) and section 17(1) of FOISA.

Commissioner’s analysis and findings

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

Section 12(1) – Excessive cost of compliance

11. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently set at £600 (regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for information would exceed that sum.

12. The projected costs an authority can consider in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA.
13. An authority may not charge for the cost of determining whether it:
 - actually holds the information requested or
 - should provide the information.
14. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

The Applicant's submissions

15. The Applicant considered the cost estimate provided by the Authority to be excessive and disproportionate, especially given that such cases were likely to be rare and may be tagged or searchable by key terms.
16. The Applicant also submitted that the Authority had not explained why a search across only the most relevant personnel or departments was not feasible. He suggested that the Authority's reliance on section 12(1) of FOISA in response to question 2 of his request therefore appeared obstructive, rather than proportionate.

The Authority's submissions

17. The Authority said that it did not categorise the records it held as the Applicant might have envisaged and that its internal record keeping did not distinguish allegations of "dishonesty under oath" as he had requested.
18. The Authority explained that it had identified 890 conduct cases (being referrals dating back to 2020) falling within the scope of request ii. It said each of these records would need to be isolated, opened, interrogated and fully understood to ensure all allegations and circumstances surrounding the referral were considered for "dishonesty under oath", as a qualitative assessment of the nature of the referral.
19. The Authority provided the following cost estimate of responding to request ii:
 - The number of records to be interrogated = 890
 - Actual cost of staff time at hourly rate of member of staff (a Regulatory Case Manager with the requisite knowledge) = £15
 - Number of hours required to complete the search – 890 records at an average of 10 minutes per record = 148 hours
 - Total cost – 148 hours multiplied by £15 per hour = £2,200.
20. In arriving at the 10 minutes per record estimate, the Authority explained that many of the 890 records included handwritten notes, detailed referrals, lengthy correspondence and dense packets of information. It reiterated that each record would need to be considered, to understand the nature of the referral and determine if it involved dishonesty under oath or perjury, as this categorisation was not used in the referral process.
21. The Authority also noted that, in relation to another request regarding fitness to teach records, it had carefully recorded the time taken and found that it took 12.65 minutes per

case to determine whether it fell in the scope of that request. It therefore considered that the lower 10-minute estimate for this request was robust, if optimistic.

22. Due to the way in which it recorded referrals, the Authority explained that it could not solely rely upon summaries of cases on its website as allegations of dishonesty under oath or perjury would not necessarily be in the summary and could instead be in the more detailed records of each case.
23. During the investigation, the Authority was asked to explain why it did not consider a keyword search would allow it to locate the information requested in request ii without exceeding the upper cost limit under FOISA.
24. The Authority responded that not all the 890 records were searchable by way of keywords, with some comprising scanned images which had not undergone optical character recognition. It also said that carrying out a keyword search would not necessarily limit the number of returns.
25. The Authority said doing a keyword search in one folder with relevant records returned hundreds of records for “dishonesty”, “oath” and “dishonesty under oath”, but many of these records were not relevant. Sampling of these records showed cases which did not fall within scope but were returned on the basis that “dishonesty” appeared in the records tangentially in connection with other matters.
26. The Authority submitted that the “dishonesty under oath” term used in the request did not conform to the referral criteria used in the Fitness to Teach process. Consequently, each of the 890 records would still have to be individually interrogated as there were “no keywords which could be used which would adequately capture the population posed by the request”.

The Commissioner’s view

27. The Commissioner has carefully considered all relevant submissions and the terms of request ii.
28. The Commissioner acknowledges that the Applicant appears to believe that the Authority should be capable of identifying the information sought in request ii more readily (e.g. through keyword searches or tags) and without exceeding the upper cost limit under FOISA.
29. It is not within the Commissioner’s remit to instruct a public authority to change its record keeping systems. He is required to consider whether section 12(1) of FOISA applies in this case, with regard to how the Authority has logged and stored the information requested, and not with regard to how the Applicant might believe that information should be logged.
30. The Commissioner has considered the Applicant’s view that the Authority should have limited the search to the most appropriate area and staff. He notes that the Authority indicated searches would be carried out by a manager from the Authority’s regulatory investigations team and would require checking its investigation files.
31. Given that the Authority does not specifically and separately record the allegations that the Applicant is asking about, the Commissioner accepts that it would need to manually inspect each of the 890 conduct case files identified to determine if they held relevant information. He also accepts that the Authority’s Regulatory Investigations Team is likely to have the greatest familiarity with the investigation files and practices and, as such, would be best suited to carrying out the searches.

32. While the Applicant may be correct that cases of the sort he requested are rare (and the Commissioner has no reason to doubt this), this does not necessarily make identification of these cases easier. In fact, the rarity of these cases may increase the difficulty of searches – like the proverbial needle in the haystack.
33. The Authority does not seem to have carried out specific sample searches to help it precisely estimate the time required to comply with request ii. However, the Commissioner is satisfied, in the circumstances, that the details the Authority provided of the time taken to comply with another request give an adequate indication of the time required to comply with request ii here – particularly when the Authority’s submissions on the work that would be required to determine whether each of the 890 conduct cases are taken into account.
34. In all of the circumstances, the Commissioner is satisfied that complying with request ii would cost more than £600 and the Authority was therefore not required to comply with this request.

Section 15 of FOISA – Duty to provide advice and assistance

35. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
36. Section 15(2) of FOISA states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms to the Scottish Ministers' code of practice on the discharge of functions under FOISA and the Environmental Information (Scotland) Regulations 2004 ([the Section 60 Code](#)¹), is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).
37. The Section 60 Code provides guidance to Scottish public authorities on the practice which Scottish Ministers consider desirable for authorities to follow in connection with the discharge of their functions under FOISA. The Section 60 Code provides (at 9.4.3 in Part 2):

"When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrower request would be a separate new request and should be responded to accordingly."
38. In this case, the Applicant indicated that the Authority failed to provide meaningful advice and assistance to enable him to refine his question, to bring the cost of complying with it under the upper cost limit in FOISA.
39. The Commissioner notes that the Authority advised that it may be able to carry out searches on a narrower date range, such as a year, but cautioned that it could not guarantee that searches for a year would not engage the cost limit.
40. Given that the Authority did provide advice and assistance to the Applicant on narrowing the date range of request ii – including appropriately managing his expectations regarding the narrower range it suggested – the Commissioner does not agree that the Authority failed to discharge its duty under section 15(1) of FOISA. (If the Applicant would find further advice and assistance on refining a future request helpful, it remains open to him to seek this from the Authority.)

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

41. In the circumstances, the Commissioner is satisfied that the Authority provided reasonable advice and assistance to the Applicant in response to question 2 of his request.

Section 17 of FOISA – Information not held

42. 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 public 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.
43. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
44. 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.
45. 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

46. The Applicant submitted that the Authority had misused and overused section 17(1) of FOISA in responding to his request. He argued that the type of information he requested – such as how staff are trained to interpret and apply policies – would reasonably be expected to exist in any competent regulatory body.
47. If this information genuinely did not exist, the Applicant submitted that this raised serious governance questions. If it did exist but was overlooked or excluded through overly narrowly interpretation of his questions, then he said that the Authority would have failed in its duty to locate the information requested.
48. The Applicant suggested that if the information requested was not documented in any internal guidance, training materials, or policy discussions, that itself raised serious questions about the rigour and transparency of the Authority's Fitness to Teach process. He said that he considered that any internal training schedules, memos, or materials that existed – even partially relevant to his questions – should have been disclosed.

The Authority's submissions

49. The Authority rejected the Applicant's suggestion that it had misused or overused section 17(1) of FOISA in responding to his request. It provided specific submissions regarding its handling of requests iii and iv of the Applicant's request, which are considered below.
50. In responding to request iii, the Authority explained that it had applied a broad interpretation to the term "consult", in accordance with its plain and ordinary meaning in the English language, which it understood to be "to ask for information or advice".

51. The Authority said that all Fitness to Teach referrals it received were dealt with on a case-by-case basis. It confirmed that it held no record which prescribed which external legal or regulatory bodies it sought information or advice from – any external enquiries would depend on the facts and circumstances of a case. As such, it maintained that it was correct to have issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in request iii.
52. However, by way of advice and assistance, the Authority’s initial response provided links to information available on its website which detailed its investigation process and included information on the bodies it might speak to during investigations.
53. In responding to request iv, the Authority said that it considered it to be requesting an explanation as to what training was undertaken rather than for specific training materials. It explained that FOISA provided a right of access to recorded information, not to opinion, narrative or creating documentation to be disclosed. As such, it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in request iv.
54. However, the Authority effectively confirmed that it held information about training on investigating dishonesty and criminal conduct. More specifically, it said that guidance contained within its Threshold Policy and within Fitness to Teach Investigations Guidance was used as part of the training provided to Regulatory Investigations staff. It linked the Applicant to versions of both documents as part of its initial response.

The Commissioner’s view

55. The Commissioner has taken account of all the relevant submissions provided by both the Applicant and the Authority. He will consider the Authority’s responses to requests iii and iv in turn.
56. For request iii, the Applicant asked: “What external legal or regulatory bodies, if any, does [the Authority] consult when assessing whether to investigate a referral involving potential criminal conduct?”
57. Neither the Authority nor Applicant specifically define what they mean by legal bodies. However, the Commissioner understands that, in this context, it refers to bodies of a specifically legal character (such as the courts).
58. The Commissioner also notes that request iii specifically refers to the process of “assessing whether to investigate a referral” (a process he understands to be governed by the Authority’s [Threshold Policy](#)²), not to the subsequent investigation itself.
59. As noted above, the Authority’s initial response shared [guidance](#)³ with the Applicant, which indicated that it may seek information from a range of bodies. Some of these bodies (e.g. the police and the courts) would, in the Commissioner’s view, reasonably be considered “external legal or regulatory bodies”.
60. However, the Commissioner notes that the guidance the Authority shared with the Applicant appears to indicate that any such consultation would occur when the Authority was considering whether to apply a Temporary Restriction Order or during the investigation itself. In other words, it does not appear to address consultation undertaken “when assessing

² <https://gtcsnew.gtcs.org.uk/web/FILES/teacher-regulation/fitness-to-teach-threshold-policy.pdf>

³ <https://www.gtcs.org.uk/fitness-to-teach/the-process/the-investigation-process>

whether to investigate a referral involving potential criminal conduct”, which is the stage specified in request iii.

61. Having considered the Authority’s submissions and having reviewed the guidance it shared with the Applicant, the Authority’s Threshold Policy and rules, the Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request)) hold recorded information which describes or identifies any external legal bodies it consults at the stage of assessing whether to investigate a Fitness to Teach referral involving potential criminal conduct.
62. At different stages of the process, the Commissioner accepts that the Authority’s decision to consult with external legal or regulatory bodies takes place on a case-by-case basis and is dependent on the particular facts and circumstances of the case. He also recognises that, in practice, there may be a limited number of external bodies that it would be appropriate or realistic for the Authority to approach in cases involving potential criminal conduct.
63. In all of the circumstances, therefore, the Commissioner therefore finds that the Authority was correct to inform the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information sought in request iii.
64. For request iv, the Commissioner acknowledges that there is some ambiguity in the wording of the request. He accepts that it could be read as requesting a high-level overview or explanation of a programme of training, but that it could also be read as requesting the specific content of the training materials.
65. In the circumstances, the Commissioner therefore does not consider the Authority’s initial interpretation of request iv to be inexplicable or unreasonable.
66. However, in his requirement for review, the Applicant explained – when disputing the Authority’s application of section 17(1) of FOISA – that he expected training materials to be disclosed. As such, the Commissioner considers that it should have been clear to the Authority prior to issuing its review outcome that the Applicant was seeking the specific content of the training materials.
67. In the circumstances, bearing in mind the initial ambiguity and the clarification provided at review stage, the Commissioner’s view is that the Authority’s interpretation of request was incorrect.
68. Given that the Authority has effectively confirmed that its training materials include a document containing guidance on the assessment of referrals involving alleged dishonesty and criminal offences, the Commissioner is satisfied that the Authority holds information falling within the scope of request iv – including, but not necessarily limited to, the relevant sections of this guidance document.
69. In all of the circumstances, therefore the Commissioner cannot find that the Authority was entitled to issue the Applicant with a notice, in terms of section 17(1) of FOISA, in response to request iv.
70. The Commissioner therefore requires the Authority to reconsider request iv, carry out adequate, proportionate searches for the information requested, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA and otherwise than in terms of section 17(1)).

Decision

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

The Commissioner finds that the Authority complied with Part 1 of FOISA by:

- applying section 12(1) of FOISA to request ii and providing him with appropriate advice and assistance in relation to this question
- issuing the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in request iii.

However, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA by issuing the Applicant with a notice, in terms of section 17(1) of FOISA, for request iv.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information requested in request iv, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA and otherwise than in terms of section 17(1)), by **13 April 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.

Euan McCulloch
Head of Enforcement

25 February 2026