



Scottish Information  
Commissioner  
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# Decision Notice 034/2026

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## Correspondence to and from the Lord Lieutenant of Moray

Applicant: Anonymous  
Authority: Moray Council  
Case Ref: 202300203

### Summary

The Applicant asked the Authority for correspondence to and from the Lord Lieutenant of Moray and the Highland Reserve Forces' and Cadets' Association over a specified period. The Authority stated that it did not hold the information requested for the purposes of FOISA. The Commissioner investigated and found that the information requested was held by the Authority for the purposes of FOISA. He required the Authority to provide the Applicant with a revised review outcome.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 3(2) (Scottish public authorities); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 13 December 2022, the Applicant made a request for information to the Authority. He asked for:
  - (i) all correspondence to and from the Lord Lieutenant of Moray and the Highland Reserve Forces' and Cadets' Association (HRFCA) from 1 January 2022 to the date of his request
  - (ii) a list of all phone calls from the Lord Lieutenant to HRCFA contacts which related to the business of HRCA (and which the Lord Lieutenant was connected to in his official capacity).

2. The Authority responded on 11 January 2023. It informed the Applicant that it understood Lord Lieutenants were not subject to FOISA as they were not listed within Schedule 1 of FOISA. Accordingly, it was unable to provide a response to the request.
3. On 12 January 2023, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision and requested that the Authority, which he noted was listed in Schedule 1 of FOISA, checked for all correspondence (per his request) in the Authority's email accounts.
4. The Authority notified the Applicant of the outcome of its review on 8 February 2023. It acknowledged the existence of an Authority email address connected to the Lord Lieutenant. However, it said that this email address was "solely held on behalf of the Lord Lieutenant" and that the information contained in it did not belong to the Authority. It otherwise reiterated the terms of its initial response.
5. On 14 February 2023, 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 it had failed to comply with his request and to provide him with the information he had requested.

## **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 8 March 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments. The Authority provided comments.
8. The case was subsequently allocated to an investigating officer.
9. During the investigation, further comments were sought and obtained from the Authority on why it did not consider that it held the information requested for the purposes of FOISA.
10. As the Applicant's requirement for review and application to the Commissioner did not express dissatisfaction with the Authority's response to part (ii) of his request, the Commissioner's decision notice will only consider the Authority's response to part (i) of the Applicant's request.

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

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

### ***Whether the information requested is held by the Authority for the purposes of FOISA***

12. 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 are not relevant in this case. The information to be given is that held by the authority at the time the request is received (section 1(4) of FOISA). If the authority does not hold the information, it is required to give the applicant notice in writing to that effect (section 17(1) of FOISA).

13. Section 3(2) of FOISA defines the circumstances in which information is held by a Scottish public authority. Section 3(2)(a)(i) of FOISA states that if a Scottish public authority holds the information on behalf of another person, then the information is not held by that authority for the purposes of FOISA. Consequently, if the information requested in any given case is held on behalf of another person (as the Authority has claimed in this case, i.e. on behalf of the Lord Lieutenant only), the authority must give the applicant notice under section 17(1) of FOISA.

#### *The Applicant's submissions*

14. The Applicant said that he was aware that the Lord Lieutenant had an email inbox on the Authority's systems. Given the existence of this "taxpayer funded" email inbox, he argued that the Authority's position that it did not hold the information requested for the purposes of FOISA was "untenable".
15. The Applicant agreed that Lord Lieutenants were not themselves listed in Schedule 1 of FOISA. However, he argued that for the information he requested to be held solely on behalf of the Lord Lieutenant then it would need to be only him who could access the Authority's email inbox for the Lord Lieutenancy. He considered this email inbox to be "FOIable".

#### *The Authority's submissions*

16. During the investigation, the Authority provided detailed responses to specific questions from the Commissioner. He has fully considered these responses but has only summarised below what he believes to be the most salient points.
17. By way of background, the Authority explained that, under the Lieutenancies Act 1997, the Lord Lieutenant is defined as a natural person with a Crown commission, and the office of the Lord Lieutenancy grants authority in ceremonial and representational functions.
18. The Authority confirmed that one email was found to be within scope of the request, which was received directly into the Authority email inbox for the Lord Lieutenancy. It stated that the Lord Lieutenant did not personally have access to the Authority's email inbox for the Lord Lieutenancy but advised that the email was promptly forwarded to him.
19. The Authority explained that a part-time member of staff had access to the email inbox for the Lord Lieutenancy. It also confirmed that a separate and distinct area (with restricted access and which held limited civic data) existed within the Authority's SharePoint that could be used, as an arrangement of convenience, to hold Lord Lieutenancy administration records.
20. The Authority said that the Lord Lieutenancy benefited from the administrative support of the Authority. It described this as a practical arrangement that had evolved over time, borne out of practical necessity, and stated that it was not a function of the Authority.
21. The Authority maintained that the information requested was not covered by FOISA as the role of Lord Lieutenant is not listed in Schedule 1. It reiterated that any information held would be held on behalf of the Lord Lieutenant only and, as such, not held by the Authority for the purposes of FOISA.

#### *The Commissioner's view*

22. The Commissioner has considered carefully the submissions from both the Applicant and the Authority.

23. In considering whether an authority holds information for the purposes of FOISA, the Commissioner will consider a number of factors, including (but not limited to):
- whether there is an appropriate connection with the authority, meaning that the information is for the purposes of carrying out its functions as a public authority
  - the content of the information
  - the circumstances in which it was created, and
  - how it is held.
24. The Commissioner does not accept that supporting an independent office holder, such as a Lord Lieutenant, will necessarily exclude information from being held by the Scottish public authority that is providing that support. In reaching this view, he has had regard to paragraph [15] of judgment of the Court of Session in [Graham v Scottish Information Commissioner \[2019\] CSIH 57](#)<sup>1</sup> (Graham):
- “There should be no scope for the introduction of technicalities, unnecessary legal concepts calculated to over-complicate matters and, by so doing, to restrict the disclosure of relevant information.”
25. The Commissioner has also had regard to paragraph [40] of the judgment of the Court of Session in [Scottish Ministers v Scottish Information Commissioner \[2023\] CSIH 46](#)<sup>2</sup>:
- “It is nonetheless the case that mere physical possession of information does not amount to holding the information; there has to be an appropriate connection between the information and the authority so that it can be properly said that the authority holds the information.”
26. Given the terms of the request, the Commissioner acknowledges that the Authority would appear to have only a limited interest in the specific information sought (which would seem to essentially relate to the Lord Lieutenant’s ceremonial and representational functions). He has no reason to doubt that the Authority’s involvement with that information was limited to the extent it described at paragraph 18 above.
27. However, having regard to paragraph [19] of the judgment of the Court of Session in Graham, the Commissioner is nonetheless satisfied that there is an appropriate connection between the information requested and the Authority. Given the nature of the relationship between the Authority and the Lord Lieutenancy, the administrative support it provides to that office holder and the fact that the Lord Lieutenant did not personally have access to the Authority’s email inbox for the Lord Lieutenancy, the Commissioner does not accept that the Authority has no internal reason for holding the information requested.
28. The Commissioner considers it clear that – generally – information held by a Scottish public authority in line with an established administrative practice, such as is the case here, should be deemed “held” for the purposes of FOISA. Given the fact that the Authority has confirmed that it possessed information covered by the request and that it appeared to possess it by virtue of its administrative role in supporting the Lord Lieutenant, the Commissioner is

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<sup>1</sup> <https://www.scotcourts.gov.uk/media/2idfz3dj/appeal-by-dr-ian-graham-against-the-scottish-information-commissioner.pdf>

<sup>2</sup> <https://www.scotcourts.gov.uk/media/wzclsnew/court-of-session-judgement-the-scottish-ministers-against-the-scottish-information-commissioner-06-december-2023.pdf>

satisfied, in all of the circumstances, that the information requested in this case is (and was, on receipt of the request) held by the Authority for the purposes of FOISA.

29. Having considered all the relevant submissions provided in this case, the Commissioner cannot accept that the information requested is not “held” by the Authority in terms of section 3(2) of FOISA. He therefore finds that the Authority failed to comply with section 1(4) of FOISA by notifying the Applicant that it did not hold the information requested for the purposes of FOISA.
30. The Commissioner requires the Authority to carry out a revised review (in terms of section 21 of FOISA) and respond to part (i) of the Applicant’s request afresh. However, this does not mean that the information will necessarily be disclosed. The right to information in section 1(1) is not absolute and is subject to the application of any relevant exemptions in Part 2 of FOISA.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 (in particular, section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant by informing him that it did not hold the information requested in part (i) of his request for the purposes of FOISA.

The Commissioner therefore requires the Authority to carry out a further review (in terms of section 21 of FOISA) and respond to the Applicant afresh, otherwise than in terms of section 17(1) of FOISA, by 17 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**

**3 March 2026**