



Scottish Information  
Commissioner  
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# Decision Notice 051/2026

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## Specified information about and relating to managers

Authority: Highland Health Board  
Case Ref: 202501586

### Summary

The Applicant asked the Authority for specified information about and relating to its managers. The Authority explained that it did not hold the information requested in an extractable format that would allow it to provide a comprehensive response. The Authority informed the Applicant that it therefore did not hold the information requested. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position that it did not hold the information requested. He required the Authority to reconsider the Applicant's request, carry out adequate and proportionate searches and issue a new review.

### Relevant statutory provisions

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

### Background

1. On 11 July 2025, the Applicant made a request for information to the Authority. Among other things, he asked the following:
  - (i) Full name and pay band of all your managers, the departments they run (or are still running), their responsibilities, the competencies and qualifications required for their job position, and their actual formal qualifications.
  - (ii) To whom do your managers have to report?

- (iii) Full name and job position of the individuals who appraised your managers in FY 2023 and FY 2024.
  - (iv) What was the outcome of the appraisals?
2. The Authority responded on 8 August 2025 in the following terms:
    - It informed the Applicant that it held no centralised or collated list of all managers, the departments they managed or their specific responsibilities. As this information was not held in an extractable format that would allow it to provide a comprehensive response to the request, it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
    - It advised the Applicant that information relating to formal qualifications of individual managers, staff appraisals, who carried them out and their outcome constituted third-party personal data and was therefore exempt under section 38(1)(b) of FOISA.
  3. On 11 August 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because the Authority had not provided him with the information requested and he could not understand why, as he did not consider the Authority's response to be clear.
  4. The Authority notified the Applicant of the outcome of its review on 5 September 2025, which fully upheld its original decision.
  5. On 8 September 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 believed that the Authority held the information and he disagreed with the extent of the application of the exemption in section 38(1)(b) of FOSIA.

## **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 12 November 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 how it established that it did not hold the information requested and its application of the exemption in section 38(1)(b) of FOISA.
9. The Authority spoke with a member of the Commissioner's staff by phone. However, it did not provide formal submissions in response to the questions outlined in the preceding paragraph.

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

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

### ***Whether the Authority held the information requested***

11. 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) of FOISA are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. This is not necessarily to be equated with information an applicant believes the authority should hold, although an applicant's reasons may be relevant to the investigation of what is actually held. 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.
13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities.

### ***The Applicant's submissions***

14. The Applicant submitted that he had requested recorded information. He considered that the Authority held the information requested and that it should not be difficult to provide him with it.

### ***The Authority's submissions***

15. As stated above, the Authority did not provide formal submissions in response to the questions asked by the Commissioner during his investigation.
16. In its initial response to the Applicant, the Authority informed the Applicant that it did not hold a centralised or collated list of managers, the departments they managed or their specific responsibilities. This meant that the information requested was not held in an extractable format that would allow it to provide a comprehensive response to the Applicant's request.
17. In its initial response to the Applicant, the Authority also advised the Applicant that, if he made a narrower request (e.g. by specifying a particular department, role or management level), it would be happy to reconsider his request and assess whether it held any relevant information.

### ***The Commissioner's view***

18. In determining whether a Scottish public authority holds the information requested in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, considering the terms of the request and all other relevant circumstances.
19. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.

20. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information requested (or holds no more information than it has identified and located in response to the request). In this case, despite the opportunity given to provide formal submissions in response to the Applicant's application, the Authority did not provide any.
21. The Commissioner accepts that the Authority does not hold the information requested centrally. However, it does not follow that the information requested is therefore not held by the Authority – it may simply mean that the information must be located from broader searches across the organisation. These are not unusual circumstances.
22. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide. He can only focus on what recorded information is actually held by the Authority (or was at the time of the request).
23. However, the Commissioner considers it inherently unlikely that the Authority does not hold the information requested (albeit he accepts that it does not hold it centrally). For example, he notes the Authority's suggestion that it may be able to provide the information requested for a particular department, role or management level. He is unclear on how responding to a narrower such request would be possible if the Authority genuinely did not record, anywhere, who its managers were.
24. In this case, therefore, the Commissioner cannot be satisfied that the Authority has fully evaluated the range of means by which the information requested could be identified and located. Given that the Authority did not provide him with submissions on the searches it carried out in response to the request (and the inherent unlikelihood that the information requested is not held by the Authority in some recorded form), the Commissioner cannot find that the Authority was entitled to give the Applicant notice, under section 17(1) of FOISA, that it did not hold the information requested.
25. The Commissioner therefore requires the Authority to reconsider the relevant parts (set out in paragraph 1) of the Applicant's request, carry out adequate, proportionate searches for the information, 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)).
26. Given his conclusion that the Authority has failed to fully evaluate the range of means by which the information requested could be identified and located, the Commissioner has not reached a conclusion on the information the Authority said that it wished to withhold under the exemption in section 38(1)(b) of FOISA. Should the Applicant be dissatisfied with the Authority's revised review outcome (including any information withheld under section 38(1)(b) of FOISA), he has the right to appeal to the Commissioner.

### ***Section 15 – Advice and assistance***

27. Section 15 of FOISA requires Scottish public authorities to provide advice and assistance to applicants, so far as it would be reasonable to expect them do so.
28. Section 15(2) of FOISA provides that a Scottish public authority shall be taken to have complied with this duty if it conforms with the guidance contained in the Scottish Ministers'

Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs ([the Section 60 Code](#)<sup>1</sup>).

29. The Section 60 Code contains best practice guidance for public authorities on discharging their functions under FOISA and the EIRs, including in relation to the provision of advice and assistance. Paragraph 5.3.3 of Part 2 of the Section 60 Code states:  
  
“If an authority is unclear about what information the applicant wants, it should obtain clarification by performing its duty to provide reasonable advice and assistance to the applicant.”
30. In this case, the Commissioner considers that the Applicant’s request can be interpreted in different ways; for example, for information about all individuals with “manager” in their job title, all individuals who perform the role of a manager or all individuals who specifically manage departments. (For the avoidance of doubt, the Commissioner’s finding that the Authority has failed to satisfy him that it does not hold the information requested applies to all of these interpretations.)
31. Although the Commissioner is not of the view that the Applicant’s request was so ambiguous as to fail to adequately specify the information requested, he considers that it would have been helpful for the Authority to seek clarification of the request.
32. The Commissioner cannot stress enough the importance of ensuring that the terms of any information request received by a Scottish public authority are clear before proceeding to respond. He would urge the Authority, and indeed all Scottish public authorities, to take steps to clarify with applicants any matter which is open to interpretation, prior to proceeding with a request (as provided for by section 15 of FOISA).
33. The Commissioner therefore recommends that the Authority engages with the Applicant, in terms of section 15 of FOISA, to ensure it has identified the correct scope of the request before issuing its review outcome.

## 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 Authority has failed to satisfy the Commissioner that it does not hold the information requested. As a result, he finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to reconsider the relevant parts of the Applicant’s request, carry out adequate and proportionate searches, reach a decision on the basis of these searches, and notify the Applicant of this decision ((all in terms of section 21 of FOISA and otherwise than in terms of section 17(1)) by **4 May 2026**).

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<sup>1</sup> <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>

## **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.

**Cal Richardson**  
**Deputy Head of Enforcement**

**19 March 2026**