



Scottish Information
Commissioner
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Decision Notice 122/2026

Fees notice issued at review stage

Authority: General Teaching Council for Scotland
Case Ref: 202502088

Summary

The Applicant asked the Authority for information on the closure of two specific sets of Fitness to Teach cases. Following a decision of the Commissioner, the Authority issued a revised review outcome which contained a fees notice. The Commissioner investigated and found that the Authority was not entitled to issue a fees notice in the revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 9(1) (Fees); 10(1) (Time for compliance); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 1 November 2024, the Applicant made a request for information to the Authority. He referred to a previous FOI request on the Authority's disclosure log, specifically to two sets of cases where the Authority decided that no further action was warranted in relation to Fitness to Teach allegations. Of these two sets of cases, the Applicant asked "...for how many had the complaint (now known as 'referral') been made within five years of the most recent alleged misconduct?".
2. On 29 November 2024, the Authority informed the Applicant that it would not meet the statutory deadline (29 November 2024) for responding to his request and that it would respond on the week commencing 2 December 2024.

3. The Authority responded on 11 December 2024. It issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested and explained why. It also advised the Applicant that if he was able to reframe his request to refer to the information he wished to obtain without basing it on the statistics disclosed in response to an earlier request, it could review its records and provide any information it held.
4. On the same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not agree that the Authority did not hold the information requested.
5. The Authority notified the Applicant of the outcome of its review on 19 December 2024, which fully upheld its original decision.
6. On 12 February 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 did not agree that the Authority did not hold the information requested and he considered the advice and assistance the Authority provided in its initial response to be misleading.
7. On 2 September 2025, the Commissioner issued [Decision 213/2025](#)¹. This decision found that the Authority breached section 1(1) of FOISA by notifying the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested. The Commissioner therefore required the Authority to issue a revised review response to the Applicant (otherwise than in terms of section 17(1) of FOISA).
8. The Authority notified the Applicant of the outcome of its revised review outcome on 13 October 2025. It provided some information to the Applicant and issued him with a fees notice, under section 9(1) of FOISA, for £45.87 for the remainder of the information covered by his request. The Applicant paid the fees notice on 20 October 2025.
9. On 22 October 2025, the Commissioner's investigating officer wrote to the Authority and Applicant advising that the case would be closed following evidence of compliance.
10. On 19 November 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 revised review because it did not provide all the information he had requested and because he considered that the Authority had failed to provide the remainder of the information within the correct timescale after he paid the fees notice.

Investigation

11. The Commissioner, as discussed further below, determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
12. On 13 February 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
13. 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.

¹ <https://www.foi.scot/sites/default/files/2025-09/Decision213-2025.pdf>

Commissioner's analysis and findings

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

The Commissioner's remit

15. The Authority questioned whether the Commissioner was *functus officio*² in this matter, on the basis that he had issued Decision 213/2025 in respect of a previous application from the Applicant regarding his request dated 1 November 2024 and confirmed to the Authority and the Applicant that the Authority had complied with the requirements of that decision.
16. The Authority therefore questioned which section of FOISA conferred a power on the Commissioner to "re-open that case". It suggested that the more appropriate route for an applicant who remained dissatisfied with the outcome of Commissioner's decision – where the application had been closed following the Commissioner's assessment that his decision had been complied with – would be "through the Court".
17. Decision 213/2025 required the Authority to issue a revised review outcome (otherwise than in terms of section 17(1) of FOISA) to the Applicant. Where the Commissioner requires a revised review outcome to be issued, that review outcome is properly issued where notice is given fulfilling the requirements of section 21(5) of FOISA, subject to any qualifications contained in the decision. In the Commissioner's view, that does not preclude the applicant, if dissatisfied with the substance of the revised review outcome, from applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
18. The Commissioner notes that the Authority's revised review outcome in this case contained, as required by section 21(10) of FOISA, particulars of the Applicant's rights of application to the Commissioner under section 47(1) and of appeal to the Court of Session under section 56. The Commissioner is satisfied that this was a correct statement of the law at the point of issue, and – bearing in mind the interpretation he has set out in paragraph 17 above, never mind the Applicant's fair and legitimate expectations – he is not satisfied that its validity was affected in any way by the administrative process of closing the previous case.
19. Clearly, the present application relates to the Applicant's dissatisfaction with the Authority's revised review outcome, not with Decision 213/2025 – nor does it revisit matters already decided upon in that decision.
20. In particular, the present application does not revisit the question of compliance with Decision 213/2025. Determining that the Authority complied with Decision 213/2025 by issuing the revised review outcome (otherwise than in terms of section 17(1) of FOISA) required by that decision did not entail the Commissioner inquiring into whether the substance of the revised review outcome complied with other provisions of FOISA that, at that stage, had not been appealed to him. Procedural compliance in terms of the decision and section 21(5) was sufficient for that purpose and, as stated above, the requester, if dissatisfied with the revised review outcome, still had the right to apply to the Commissioner for a decision in terms of section 47(1) of FOISA.

² The doctrine of *functus officio* essentially holds that an official who has performed a function or discharged a duty allocated to him has no further status in the matter.

21. Consequently, the Commissioner does not accept that he is functus officio in this matter. He remains satisfied that the present application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
22. Given the nature of the dissatisfaction expressed by the Applicant in the present application, the Commissioner must first consider whether the Authority was entitled to issue a fees notice as part of the revised review outcome required by Decision 213/2025.

Section 9 – Fees

23. Section 9 of FOISA states that a Scottish public authority receiving a request which requires it to comply with section 1(1) may, within the time allowed by section 10 for so complying, give the applicant a notice in writing (a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority.
24. During his investigation, the Commissioner invited the Authority to comment on why, given the terms of section 9(1) of FOISA, it considered it was permitted to issue a fees notice in the revised review outcome.
25. The Authority responded that it had not identified any explicit prohibition upon the issue of a fees notice at the review stage. It advised that it was aware of a number of cases where the Commissioner had ruled on the permissibility of a public authority issuing a fees notice at review stage when it had not done so at initial response stage. It cited [Decision 130/2022](#)³ as a recent example of this.
26. The Commissioner does not consider Decision 130/2022 relevant to the present application as it does not discuss, or relate to, a fees notice issued under section 9(1) of FOISA. Instead, it relates (in part) to the application of section 12 (Excessive cost of compliance) of FOISA.
27. The Commissioner previously found, in [Decision 027/2006](#)⁴ (at paragraph 91), that section 9 of FOISA allows a fees notice to be issued only within the time for compliance set out in section 10 (i.e. within the 20 working day period during which the public authority must first respond to a request for information). The Commissioner can identify no basis for taking a different approach in this case.
28. As the Authority first issued a fees notice as part of the revised review outcome, the Commissioner finds that the fees notice was not issued within the time permitted by section 10 of FOISA. Consequently, the Commissioner must find that the Authority was not entitled to issue a fees notice as part of the revised review outcome.
29. 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.
30. As the Commissioner has found that the Authority was not entitled to issue a fees notice, he must find that the Authority technically failed to comply with section 1(1) of FOISA by not

³ <https://www.foi.scot/sites/default/files/2022-12/Decision130-2022.pdf>

⁴ <https://www.foi.scot/sites/default/files/Decision027-2006.pdf>

providing the information which it has now provided to the Applicant by the date of its revised review outcome.

31. Given that the Authority has now provided this information 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.
32. As the Commissioner has found the Authority was not entitled to issue a fees notice, he will not go on to consider what timescales would have applied had the fees notice been valid.

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 was not entitled to issue a fees notice as part of the revised review outcome it issued to the Applicant as required by Decision 213/2025. By issuing a fees notice, the Authority failed to provide the information requested to the Applicant by the date of the review outcome and therefore breached section 1(1) of FOISA.

Given that the Authority has now provided 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.

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.

David Hamilton
Scottish Information Commissioner

20 May 2026