



Scottish Information
Commissioner
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Decision Notice 116/2026

Records relating to an investigation – failure to respond

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202600628

Summary

The Applicant asked the Authority for specific information held in relation to the investigation into the murder of Shamsuddin Mahmood in Orkney in 1994. This decision finds that the Authority failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

Background

1. The Applicant made an information request to the Authority on 25 January 2026.
2. The Authority did not respond to the information request.
3. On 25 February 2026, the Applicant wrote to the Authority in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 30 March 2026, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 15 April 2026.
8. The Commissioner received submissions from the Authority on 28 April 2026. These submissions are considered below.
9. The Authority acknowledged that it had failed to respond to the Applicant and stated that it was exceptionally busy at the moment and this increase in demand had affected both its core FOI team and also the business areas it relied upon for information. The Authority apologised and reflected that it always endeavours to respond quickly but that on this occasion it has been unable to meet the statutory timescale. The Authority further advised that it had a number of requests from this Applicant and were trying to provide responses to some older requests in the first instance. The Authority advised that it hoped to have a response to this request in the first week of May.
10. The Commissioner notes that the Authority have had time to respond to the request whilst this Appeal was awaiting attention and have still failed to do so, despite advising a response was imminent.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's/the Applicants' request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
14. It is a matter of fact that the Authority did not provide a response to the Applicant's/the Applicants' requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
16. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.
17. The Commissioner would remind Scottish public authorities that the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 ([the Section 60 Code](https://www.gov.scot/publications/foi-eir-section-60-code-practice/)¹) expects them to be adequately resourced to support and deliver their FOI duties (paragraph 1.1.4 in Part 2).

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

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. The Commissioner requires the Authority to carry out a review and issue it by 2 July 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.

Jill Walker
Deputy Head of Enforcement

18 May 2026