



Scottish Information
Commissioner
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Decision Notice 117/2026

Exercise of discretion when considering early acceptance

Authority: Scottish Public Services Ombudsman
Case Ref: 202501957

Summary

The Applicant asked the Authority for information on how it exercised its discretion when considering early acceptance. The Authority provided some information to the Applicant, who believed further information was held which fell within scope of his request. The Commissioner investigated and found that the Authority had complied with FOISA in responding to the Applicant's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 29 August 2025, the Applicant made a request for information to the Authority. He asked for:
“... any internal records, guidance, or oversight mechanisms that demonstrate how [the Authority] ensures its discretion is applied fairly, consistently, and lawfully when considering early acceptance. If such records do not exist, please confirm this explicitly.”
2. The Authority responded on 26 September 2025. It provided the Applicant with information it considered relevant and highlighted particular information within its internal Public Service Complaints Guidance and its Quality Assurance guidance.
3. Later that same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied because he did not consider that the information provided by the Authority addressed the terms of his request.

4. The Authority notified the Applicant of the outcome of its review on 23 October 2025, which upheld its original decision. In particular, it confirmed that it did not hold the further records that the Applicant suggested it would hold and that it held no other records or policies beyond those provided already falling within the scope of his request. It also explained that it had not interpreted his request to cover information within case files. Had it interpreted his request to cover information within case files, it stated that it would consider sections 12 and 26(a) of FOISA to apply to this information.
5. On 24 October 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 consider that the Authority had carried out adequate searches for the information 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 16 January 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
8. During the investigation, the Applicant confirmed that his request was for "high-level, non-case-specific information" and was not dependent upon information within case files. The Commissioner will therefore not consider sections 12 and 26(a) of FOISA, which the Authority only relied upon in relation to information within case files, further in this decision notice.
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 how the Authority established the information it held falling within the scope of the request.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

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 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) 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 by section 1(4) of FOISA. 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.

13. 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.
14. 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) held by the public authority.

The Applicant's submissions

15. The Applicant commented that the guidance supplied by the Authority provided only general considerations and broad statements that he did not consider to be clear criteria for when discretion must, or should not, be exercised. In particular, he noted that while the information provided by the Authority referred to "one-to-one meetings" and "case discussions", it contained no records or policies demonstrating how these ensure consistency, auditability, or accountability.
16. The Applicant commented that in practice the Authority appeared to apply a near-blanket rule that premature complaints were not accepted, save in undefined "exceptional" circumstances.
17. The Applicant also indicated that he expected the Authority to hold internal oversight logs, audit trails, decision review summaries and/or records of policy discussions or training materials relating to the application of its discretion.

The Authority's submissions

18. The Authority noted that the Applicant asked for internal procedural information in relation to how the Authority handled complaints made to it. It explained that its internal public service complaints procedures and guidance were kept together in a handbook for use by staff, which was filed in its electronic document and record management system.
19. The Authority explained that it had carried out searches of its procedures and guidance using the search terms "premature" (i.e. a complaint sent to the Authority too early, prior to completing the complaint process of the relevant organisation) and "discretion."
20. The Authority confirmed that it had also consulted with its public service complaints team managers, who oversee the Authority's three public service complaints investigation teams, and the Assessment and Guidance team, who process the new complaints, and the Ombudsman's Executive Casework Officer, who coordinated decision reviews and quality assurance.
21. Additionally, the Authority stated that it had consulted its Legal and Policy Officer, who had in-depth knowledge of the Authority's legislation and policy and coordinated most training sessions on the legislation, and that it had checked the record of training it held around the Authority's statutory tests.
22. The Authority confirmed that it did not hold internal oversight logs, audit trails, or decision review summaries outwith case files that would demonstrate how the Authority ensured that it applied its discretion fairly, consistently and lawfully when considering early acceptance. It stated that it checked whether any quality assurance or decision reviews may be in scope and confirmed none were.

23. In summary, the Authority maintained that it did not hold any further information falling within the scope of the Applicant's request.

The Commissioner's view

24. In this case, the Commissioner's remit is limited to establishing what records exist and the extent to which the information requested is held by the Authority. As stated above, his decision is considering the interpretation of the request confirmed by the Applicant (i.e. for "high-level, non-case-specific information", and not dependent upon information within case files).
25. Having considered the submissions of both the Applicant and Authority, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of the request. In his view, those the Authority consulted in response to the request had appropriate experience and knowledge of the subject matter of the request. He considers that the steps taken by the Authority would have been capable of locating any further information falling within the scope of the request, if it was held.
26. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of the request. He has no locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information the authority actually holds.
27. In all of the circumstances, the Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of the request. He therefore finds that the Authority complied with section 1(1) of FOISA in responding to the Applicant's request.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

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.

Cal Richardson
Deputy Head of Enforcement

19 May 2026