



Scottish Information
Commissioner
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Decision Notice 128/2026

Statistics about Scottish Prison Service complaints

Authority: Scottish Public Services Ombudsman
Case Ref: 202300366

Summary

The Applicant asked the Authority for statistics about Scottish Prison Service complaints. The Authority advised the Applicant that some of the information was otherwise available and that it was prohibited by law from disclosing the remaining information. The Commissioner investigated and found that some of the information was otherwise available, but the Authority was not prohibited by law from disclosing the remaining information. He required the Authority to disclose the wrongly withheld information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 25(1) and (3) (Information otherwise available); 26(a) (Prohibitions on disclosure); 47(1) and (2) (Application for decision by Commissioner).

Scottish Public Services Ombudsman Act 2002 (the SPSO Act) sections 12(1) (Investigation procedure) and 19(1), (2) and (3) (Confidentiality of information).

Background

1. On 6 December 2022, the Applicant made a request for information to the Authority. He asked for:
 - (1) The number of complaints received by [the Authority] since April 2020 where the public authority complained about is the SPS.
 - (2) The number of those complaints either-
 - a) awaiting allocation to a complaints resolver;
 - b) allocated to a reviewer who has “closed” the file, returning the complaint to the SPS on the basis that the organisation has not provided a sufficient response;
 - c) allocated to a reviewer and subject to a full investigation by the [Authority];
 - d) allocated to a reviewer, but still undergoing initial consideration;
 - e) otherwise disposed of.
2. The Authority responded on 20 December 2022, in the following terms:
 - For parts (1) and (2)(b), (c) and (e), it noted that it published annual statistics regarding the complaints it received. It enclosed a copy of tables showing the number of complaints it received about SPS in response to part (1), which it said also contained the information requested in parts (2)(b), (c) and (e) for the periods 2020-21 and 2021-22. It stated that this information was therefore exempt under section 25(1) of FOISA.
 - For the remaining parts of the request (including from the period April 2022 for parts (2)(b), (c) and (e)), it informed the Applicant that the information requested was exempt from disclosure under section 26(a) of FOISA.
3. On 23 January 2023, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the Authority’s decision because the information published on the Authority’s website was not the information he had requested and the exemption in section 26(a) of FOISA did not apply to the remaining information.
4. The Authority notified the Applicant of the outcome of its review on 3 February 2023. It noted that the information it had applied the exemption in section 25(1) of FOISA to only contained some of the information requested and maintained its application of the exemption in section 26(a) of FOISA to the remaining information.
5. On 23 March 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 he considered that it had misapplied the exemptions in sections 25(1) and 26(a) of FOISA.

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 31 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 was also

asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information.

8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Scope

10. The Authority advised the Applicant it had provided information in response to parts (2)(b), (2)(c) and (2)(e) of his request for the period of 2020-21 and 2021-22 only. The Applicant considered that this information was not the information he requested.
11. For part (2)(b), the Commissioner accepts that in the information provided to the Applicant addresses the information requested (for the period of 2020-21 and 2021-22).
12. For part (2)(c), the Commissioner is not satisfied that the Authority's response addresses the information requested. While it provides information on the number of cases closed during an investigation, it does not appear to provide information on the total number of cases that moved to investigation (i.e. including cases that remained open). He therefore finds that this information does not fall within the scope of part (2)(c).
13. For part (2)(e), while there is no specific row in the information provided to the Applicant that is specifically labelled "otherwise disposed of", the Commissioner notes that it is straightforward to sum the remaining outcomes to reach this result. He therefore accepts that this information is contained in the information provided.
14. In all of the circumstances, the Commissioner finds that the partial information provided by the Authority in response to parts (2)(b) and (2)(e) fell within the scope of the request.
15. The Commissioner recognises that this information represents only a subset of the information requested, with the remaining information withheld under the exemption in section 26(a) of FOISA. However, he would note that it is possible (and not unusual) for exemptions to apply to subsets of information.

Section 25 – Information otherwise available

16. The Applicant disagreed that the exemption in section 25(1) of FOISA applied to the information claimed by the Authority because, as outlined above, he did not accept that the information fell within the scope of his request.
17. Having found, above, that subsets of information under parts (2)(b) and (2)(e) of the request fell within the scope of the request, the Commissioner must now go on to consider whether the exemption in section 25(1) of FOISA applied to this information.
18. Under section 25(1) of FOISA, information which an applicant can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest set out in section 2(1)(b) of FOISA.
19. Section 23 of FOISA requires each public authority, as defined by FOISA, to adopt and maintain a publication scheme, approved by the Commissioner. The purpose of this scheme

is to provide access to information that an authority readily makes available, without an applicant having to go through the formal request process within FOISA.

20. All Scottish authorities have adopted the Commissioner's Model Publication Scheme (MPS). This requires them to publish a Guide to Information that they make available. Each publication scheme sets out the classes of information that are published by the public authority and, for each class, details the manner in which the information is made available, and whether or not a charge will apply.
21. Section 25(3) of FOISA creates the presumption that where information can be requested in accordance with an authority's publication scheme, it is reasonably accessible and so subject to an absolute exemption from release under the terms set out in Part 1 of FOISA. Instead, the information should be made available under the terms set out in the publication scheme.
22. In this case, the publication scheme adopted sets out that the Authority shall normally provide the information by post to applicants (including the Applicant) who cannot or do not wish to access the information online.
23. The Commissioner has also confirmed that the information in question is [published](#)¹ through the Authority's publication scheme. In all of the circumstances, the Authority therefore accepts that the Authority was entitled to rely upon the exemption in section 25(1) of FOISA to withhold the information in question under FOISA.
24. The Commissioner will now go on to consider the Authority's application of the exemption in section 26(a) of FOISA to withhold the remaining information requested by the Applicant.

Section 26(a) – Prohibitions on disclosure

25. Section 26(a) of FOISA exempts information from disclosure under FOISA where disclosure is prohibited by or under any other enactment. This is an absolute exemption in that it is not subject to the public interest test set down in section 2(1)(b) of FOISA.
26. The Applicant did not agree that the statistical information requested was provided by complainers. The Authority submitted that section 19(1) of the SPSO Act prevented it from disclosing the information requested.
27. Section 19(1) of the SPSO Act provides that information obtained by the Authority, or any of the Authority's advisers, in connection with any matter in respect of which a complaint or a request has been made, must not be disclosed except for a limited range of purposes specified elsewhere in section 19. These purposes do not include disclosure of information under FOISA.
28. The Authority considered that the existence of complaints was itself information it obtained in connection with any matter in respect of which a complaint or a request has been made. In particular, it highlighted that in Decisions [128/2010](#)² and [031/2010](#)³ the Commissioner held that the names of public authorities complained about were covered by section 19(1) of the SPSO Act.

¹ https://www.spsso.org.uk/sites/spso/files/communications_material/statistics/2020-21/AnnualStatisticsComplaintsDeterminedbyAuthorityandOutcome2020-21.pdf

² <https://www.foi.scot/decision-1282010>

³ <https://www.foi.scot/decision-0312010>

29. The Authority noted that section 12(1) of the SPSO Act stipulates that an investigation by the Authority under section 2 of the SPSO must be conducted in private. It argued that disclosure of the information requested under FOISA would breach this privacy.

The Commissioner's view

30. The Commissioner has carefully considered the Authority's submissions, together with the terms of the request.
31. The Commissioner notes that Decisions 128/2010 and 031/2010 do not refer to the redaction of the names of public authorities in high level statistics. Instead, they relate to the redaction of public authorities from specific correspondence related to specific complaints.
32. In [Decision 219/2025](#)⁴, the Commissioner found that the Authority was entitled to withhold statistical information about applications under section 26 of FOISA. However, that decision addressed detailed information about the circumstances of complainers, not more technical and high-level information about cases received and the disposal of these cases.
33. In this case, the information requested is not details of the complaints themselves but rather high-level statistical information about the volume of complaints and the Authority's handling of these complaints.
34. In [Decision 149/2010](#)⁵ the Commissioner found that the extent of the information "obtained" during an investigation is extensive, but that it did not extend to all information contained in an investigation or case file. He went on to find that that the definition of "obtained" did not extend to include information generated by the Authority during an investigation, except where the generated information included information provided to the Authority in connection with that investigation.
35. In this case, part (1) of the request is not for information that happens to be within a case file but for the mere number of existing case files. Similarly, the constituent elements of part (2) of the request are all for information about the decisions that the Authority has made subsequent to receiving the complaints, not about the information it has received.
36. In all of the circumstances, the Commissioner therefore does not agree that disclosure of the information requested was forbidden by section 19(1) of the SPSO Act.
37. The Commissioner also found in Decision 149/2010 that section 12(1) of the SPSO Act constituted a prohibition on disclosure, albeit with certain limits. However, he does not agree that responding to any part of the request in this case would reveal anything material about the Authority's conduct of investigations or inhibit its ability to investigate in private.
38. In all of the circumstances, the Commissioner therefore does not agree that disclosure of the information requested was forbidden by section 12(1) of the SPSO Act applies to this information.
39. Given the Commissioner has found that neither prohibition applies to the information requested, he must find that the Authority was not entitled to withhold this information under the exemption in section 26(a) of FOISA. He requires the Authority to disclose this information to the Applicant.

⁴ <https://www.foi.scot/decision-2192025>

⁵ <https://www.foi.scot/decision-1492010>

Decision

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

The Commissioner finds that by correctly withholding some information, which was provided under its publication scheme, under section 25(1) of FOISA, the Authority complied with Part 1.

However, by incorrectly withholding the remaining information under section 26(a) of FOISA, the Authority failed to comply with Part 1 (in particular section 1(1)) of FOISA.

The Commissioner therefore requires the Authority to disclose the remaining information wrongly withheld under section 26(a) of FOISA, by **10 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.

Euan McCulloch
Head of Enforcement

26 May 2026