



Scottish Information
Commissioner
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Decision Notice 145/2026

GP Sustainability Group live time updates

Authority: Fife Health Board
Case Ref: 202300692

Summary

The Applicant asked the Authority for live time updates relating to sustainability pressure across all GP practices in Fife. The Authority provided the Applicant with the date on which the Operational GP Sustainability Group was re-established but advised that it did not hold information relating to sustainability pressures across all GP practices. 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](#)¹ (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 22 March 2023, the Applicant made a request for information to the Authority. They asked for the following:
 - I. Confirmation about when the GP sustainability Group started providing live time updates pertaining to sustainability issues across all GP practices in Fife.

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

- II. A copy of all live time updates of all sustainability pressure across all 53 GP practices in Fife as compiled by the GP sustainability group, which should take in the period from when this practice started until now, 22nd March 2023.
2. The Authority acknowledged the request on 22 March 2023 but failed to respond.
3. On 4 May 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 5 May 2023. The Authority advised that the GP Sustainability Group was re-established on 24 January 2023 but that the sustainability pressures across all 53 practices in Fife was not available and it was therefore relying on section 17 of FOISA (information not held).
5. On 6 June 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the Authority's review because they did not believe that the Authority did not hold information falling within scope of their request given other information already available online about the function of the GP Sustainability Group.

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 15 June 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.
8. Following the provision by the Authority of comments on the application, the case was allocated to an investigating officer.
9. The Authority was invited to answer specific questions related to how it established that it did not hold the information requested. Further submissions were requested during the investigation in an effort to understand how the Authority had handled 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 17 of FOISA - Notice that information is not held

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) 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). 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. 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) actually held by the public authority.

The Applicants comments on section 17

15. The Applicant submitted that they dispute the Authority's assertion that nothing is held in light of the Authority itself reporting, on page 48, of a minute of the [Public Health and Wellbeing Committee](https://www.nhsfife.org/media/iuwwrweh/nhs-fife-public-health-wellbeing-committee-meeting-papers-20230111.pdf)² that took place on 11 January 2023, that:

"... GP practices across Fife are facing challenges in maintaining sustainable services, namely due to challenges in recruiting and retaining GPs. Any risks and issues relating to these are captured and discussed via a newly convened GP Sustainability Group, chaired by Portfolio Lead for Primary Care, with the ambition to proactively support practices facing sustainability issues. Reporting via PCGSOG, this group will provide regular updates on live time sustainability pressures across all 53 Practices within Fife."
16. The Applicant argued that because this report states that 'regular updates on live time sustainability pressures' would be reported that there should be updates available.
17. The Applicant states that this is of significant public interest given the reported problems facing GP practices across Fife.

The Authority's comments on section 17

18. The Authority submitted that the work of the Group had (at the time of the request) only recently been re-established and was still in the process of establishing data gathering across all GP Practices in Fife.
19. The Authority explained that it was actively supporting one practice.
20. The Authority commented that searches undertaken more than two years ago could not be evidenced now as these were not recorded, but that, in line with its internal processes the relevant staff from the organisation and Fife Health and Social Care Partnership were contacted and asked for data relating to the request.
21. The Authority's position is premised on the fact that the Group had only recently been re-established, with work progressing on a process for gathering information across all GP practices in Fife, and therefore no information was held.
22. The Authority's limited submissions advised that the Operational GP Sustainability Group only met twice within the timeframe between it being re-established and the date the request was received (a period of three months), despite this it clarified during the course of the investigation that it does not record live time updates on GP sustainability pressures.

² <https://www.nhsfife.org/media/iuwwrweh/nhs-fife-public-health-wellbeing-committee-meeting-papers-20230111.pdf>

23. After some clarification of the origins of the quote supplied by the Applicant, the Authority supplied a link to the Assurance Report it was taken from [NHS Fife Public Health & Wellbeing Committee 11 January 2023](https://www.nhsfife.org/media/iuwwrweh/nhs-fife-public-health-wellbeing-committee-meeting-papers-20230111.pdf)³.
24. The Authority advised that staff from the Health and Social Care Partnership were the most suitable to request information from as they are responsible for the governance, planning and resourcing of social care, primary and community healthcare. The Authority supplied a copy of an email between staff evidencing the internal request for information and which team supplied an answer to the Applicant's questions.

The Commissioner's view about section 17

25. The Commissioner has carefully considered all relevant submissions and the terms of the request.
26. The Commissioner considered the submissions by the Authority to be limited at best. There is clearly evidence that that there was, at some stage, some intention to record the sustainability pressures across GP Practices in Fife, why this may never have happened is not entirely clear.
27. The Commissioner found the clarifications requested from the Authority to offer no further insight into whether or not it held any more recorded information falling within the scope of the Applicant's request.
28. The Commissioner understands, from the Authority's submissions, that the Operational GP Sustainability Group met twice during the time period covered by the Applicant's request, and apparently 'discussed sustainability issues' at that time and actions progressed, but no evidence of this has been supplied. Furthermore, it is unclear as to whether minutes were taken and information recorded. It would seem to the Commissioner to be unreasonable that meetings took place and no information relating to the discussion at those meetings and any agreed actions was recorded. Similarly, despite confirmation that the Operational GP Sustainability Group was re-established in January 2023, in its review response, the Authority somewhat contradictorily advised that no information was held.
29. The Authority did not provide the Commissioner with any screenshots or detailed evidence (such as lists of the search terms used, date parameters, digital sources accessed, etc.) that would demonstrate that thorough and proportionate searches were carried out. Furthermore, the email evidence provided suggests that it may be that no actual searches were undertaken.
30. In the absence of any evidence of the searches carried out for the information requested, and in light of the explanation from the Authority that two meetings of the Operational GP Sustainability Group took place within the timescale covered by the Applicant's request, as well as the confirmed re-establishment of the group in January 2023, the Commissioner cannot be assured, on the balance of probabilities, that no relevant, recorded information is held which would fulfil the Applicant's request. The Commissioner therefore has no option but to find that the Authority was not entitled to rely on section 17(1) of FOISA in this case.

³ <https://www.nhsfife.org/media/iuwwrweh/nhs-fife-public-health-wellbeing-committee-meeting-papers-20230111.pdf>

31. The Commissioner therefore requires the Authority to carry out reasonable, proportionate searches to locate any relevant recorded information held falling within scope of the Applicant's request and to provide a revised review outcome to the Applicant.

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. The Authority failed to satisfy the Commissioner that it does not hold recorded information which would fulfil the Applicant's request. As a result, the Commissioner finds that the Authority was not entitled to respond in terms of section 17(1) (Notice that information is not held) of FOISA and, in doing so, it failed to comply with section 1(1) (General entitlement).

The Commissioner therefore requires the Authority to

- carry out reasonable and proportionate searches for any recorded information falling within scope of the Applicant's request and provide evidence that the searches have been carried out to the Commissioner's satisfaction, and
- reach a decision on the basis of those searches and notify the Applicant of the outcome (in terms of section 21(4) of FOISA

by **16 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

1 June 2026