



Scottish Information
Commissioner
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Decision Notice 147/2026

Freedom of Information request submitted by a named Councillor

Authority: Dumfries and Galloway Council
Case Ref: 202502220

Summary

The Applicants asked the Authority for a copy of a Freedom of Information request submitted to it by a named Councillor. The Authority informed the Applicants that it did not hold the information requested. The Commissioner investigated and found that, while it had been entitled to inform the Applicants that it did not hold the specific information requested, the Authority had failed to provide them with adequate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 11 October 2025, the Applicants made a request for information to the Authority. They asked for a copy of an information request submitted by a named Councillor which was referenced in the Annandale Observer news article on 10 October 2025 regarding a “clash of councillors and officials” and “secretive council staff departures”. They noted that the article mentioned that the information request uncovered non-disclosure agreements and settlement agreements with departing staff members. They also asked for a copy of the Authority’s response to the information request.

2. The Authority responded on 7 November 2025. It issued the Applicants with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
3. On 11 November 2025, the Applicants wrote to the Authority requesting a review of its decision. They stated that they were dissatisfied with the decision because they considered that the Authority did hold the information requested.
4. The Authority notified the Applicants of the outcome of its review on 9 December 2025, which fully upheld its original decision.
5. Later the same date, the Applicants wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. They stated that they were dissatisfied with the outcome of the Authority's review because they believed the information was held by the Authority and because they considered the Authority had failed to provide them with adequate advice and assistance.

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 6 March 2026, the Authority was notified in writing that the Applicants had made a valid application. The case was subsequently allocated to an investigating officer.
8. 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. These related to how it established that it did not hold the information requested and whether it considered it had fulfilled its duty to provide advice and assistance under section 15 of FOISA.

Commissioner's analysis and findings

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

Section 17(1) of FOISA – Notice that information is not held

10. 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.
11. 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.
12. 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.

13. 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 Applicants' submissions

14. The Applicants considered that the Authority's response and review outcome were "directly contradicted by the publicly available evidence" that formed the basis of their request.
15. According to the Applicants, the Authority used a "false procedural claim" that no such request from the Councillor existed in order to avoid addressing the substance of the request.

The Authority's submissions

16. The Authority stated that its Information Governance Team had searched both its FOI Case Management System and Microsoft Outlook for a request made by the named Councillor. It confirmed that it had received no such information request from the named Councillor.
17. The Authority explained that it had considered whether the request referred to by the Applicants may have been made by someone other than the named Councillor. However, as the Applicants were "very clear" that they wanted the information requested by the named Councillor, it did not consider any information requests referencing non-disclosure agreements, where these were not submitted by the named Councillor, to be relevant.

The Commissioner's view

18. The Commissioner has taken account of all the relevant submissions provided by the Applicants and the Authority, together with the terms of the request and the content of the article referred to by the Applicants.
19. During the investigation, the Authority provided the Commissioner copies of particular information requests (and the responses to these requests) that referred to, or related in some way, to non-disclosure agreements.
20. From these requests, the Commissioner identified two that appeared to match the description of the information request referred to by the Applicants in their request and in the [article](#)¹ in the Annandale Observer.
21. However, the Commissioner acknowledges that the Applicants' request asked for the information request submitted by the named Councillor. In other words, if the information request was not submitted by the named Councillor, then it would not strictly fall within the scope of the Applicants' request.
22. The Authority confirmed that none of these requests (including the two identified by the Commissioner as matching the description of the information request sought by the Applicants) were submitted by the named Councillor.

¹ <https://dng24.co.uk/secretive-council-staff-departures-to-be-investigated/>

23. Given the explanations and submissions provided, the Commissioner considers that the Authority took adequate and proportionate steps to establish if the information was held and he is satisfied, on a strict interpretation of the Applicants' request, that it does not (and did not, on receipt of the request) hold the information requested.
24. The Commissioner therefore finds that the Authority was correct to give the Applicants notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Section 15 of FOISA – Duty to provide advice and assistance

25. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
26. Section 15(2) of FOISA states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice and assistance in a particular case) it conforms with 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](#)²).
27. As stated above, the Commissioner identified two requests that appeared to match the description of the request sought by the Applicants. Copies of these requests and the Authority's responses are now available on the Authority's [FOI disclosure log](#)³. They can be found by searching against their respective reference numbers: 101000260436 (dated 24 February 2025) and 101000302976 (dated 30 June 2025).
28. While neither of these requests were made by the named Councillor, the Commissioner considers that the Authority should have identified that these were the requests (and responses) sought by the Applicants in their information request. He notes that a Google search for "secretive council staff departures" (as specified in the request) together with the name of the named Councillor (as specified in the request) brings up a single result – the article in the Annandale Observer referred to in the request. This article states:

"I myself – through an FOI – became aware of non-disclosure agreements being made. In fact, three in the last three years."
29. Given that the information referred to in the above quotation is the information provided in response to requests 101000260436 and 101000302976, the Commissioner considers that the Authority should have, in line with its duty under section 15(1) of FOISA, informed the Applicants of the existence of these requests and its responses to them. Had it done so, this might have obviated the need for the Applicants to make an application to the Commissioner.
30. In the circumstances, the Commissioner therefore finds that the Authority failed to comply with its duty under section 15(1) of FOISA.
31. Given that the advice and assistance the Authority should have provided to the Applicants is now contained within his decision notice, he does not require the Authority to take any action in response to its failure to comply with its duty under section 15 of FOISA.

² <https://www.gov.scot/publications/foi-eir-section-60-code-practice/>

³ <https://experience.arcgis.com/experience/0cddaaaffc1b439c92b7a83fc60f803f/page/Page>

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 Applicants.

The Commissioner finds that the Authority was correct to inform the Applicants, in terms of section 17(1) of FOISA, that it did not hold the information requested.

However, the Commissioner finds that the Authority did not fulfil its duty, under section 15 of FOISA, to provide advice and assistance to the Applicants.

Given that the advice and assistance the Authority should have provided to the Applicants is now contained within his decision notice, he does not require the Authority to take any action in response to its failure to comply with its duty under section 15 of FOISA.

Appeal

Should either the Applicants 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

2 June 2026