



Scottish Information
Commissioner
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Decision Notice 161/2026

Policy or guidance issued to headteachers on external practitioners

Authority: East Lothian Council
Case Ref: 202501810

Summary

The Applicant asked the Authority for information relating to any policy or guidance issued to headteachers about working with privately arranged therapists, instructors, tutors or practitioners. The Authority informed the Applicant that it held no information within scope at the time of the request. The Commissioner investigated and was not satisfied (given the evidence of searches provided) that the Authority did not hold information within scope of the request. He required the Authority to carry out fresh searches and to issue the Applicant with a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (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 2 September 2025, the Applicant made a request for information to the Authority. She asked for:
 - (i) A copy of any policy in place or guidance issued to headteachers relating to working with privately arranged therapists, instructors, tutors or practitioners.

- (ii) Details of any policy in place or under consideration titled 'Working with Parents and Carers Seeking Support to Work Collaboratively with Privately Arranged Therapists, Instructors, Tutors or Practitioners'
 - (iii) Minutes of and papers for any meeting of the East Lothian local negotiating committee for teachers between 1 September 2022 and 2 September 2025 where:
 - (a) a policy titled 'Working with Parents and Carers Seeking Support to Work Collaboratively with Privately Arranged Therapists, Instructors, Tutors or Practitioners' has been discussed, and
 - (b) where there have been discussions on the development, consultation on, or adoption of a policy relating to how schools facilitate working with privately arranged therapists, instructors, tutors or practitioners.
2. The Authority responded on 26 September 2025. It gave the Applicant notice under section 17(1) of FOISA that it did not hold information that fell within the scope of requests (i) and (iii)(a). In respect of requests (ii) and (iii)(b) it advised the Applicant that its Additional Support for Learning Policy, which would include a section about privately arranged therapists/instructors/tutors, was under review and that this had yet to be finalised and shared with schools.
 3. On 29 September 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because she believed that information was held in respect of request (i). The Applicant stated that the Authority had already issued advice/guidance to schools and that decisions at headteacher level were being made county-wide on the basis of this advice/guidance.
 4. The Authority notified the Applicant of the outcome of its review on 3 October 2025. The Authority disclosed some information (in the form of the updated Additional Support for Learning (ASL) policy titled "Included, Engaged & Involved Identifying, Assessing and Providing for Additional Support Needs of Children and Young People") to the Applicant and it explained that this was not available at the time of the Authority's initial response because it had not yet been published and issued to schools.
 5. On 8 October 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority's review as she believed that the information was held at the time her request was made. She commented that she had evidence that guidance was sent to schools prior to her request being made on 2 September 2025.

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 14 November 2025, the Authority was notified in writing that the Applicant had made a valid application, and the case was 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 the process by which the policy was updated and schools informed of this, and to searches carried out for information falling within scope of the request.

Commissioner's analysis and findings

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

Scope of the investigation

10. As noted above, in this case the Applicant has only challenged the Authority's response to request (i), therefore the Commissioner's consideration in this case is limited to the Authority's handling of request (i).

Section 17(1) 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 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.

Information disclosed during the investigation

15. On 14 April 2026, the Authority disclosed information to the Applicant in the form of minutes of a meeting held on 29 August 2025 between the Authority's Education Support Officer and six Depute Headteachers.
16. The Authority stated that its Education Support Officer had advised that he had discussed the forthcoming changes to the Authority's ASL policy at a meeting with depute headteachers (not all Authority depute heads), on 29 August 2025. It explained that, while information about the then-upcoming changes to the ASL policy was initially communicated verbally, minutes of the meeting were taken and circulated to invitees on 1 September 2026, and it acknowledged that this pre-dated the Applicant's information request.

17. The minutes recorded that the new ASL policy would state that the Authority did not promote private agencies/therapists etc. delivering sessions in school during the school day and that deputy headteachers should liaise with their headteacher if relevant.
18. In its submissions to the Commissioner, the Authority commented that while the wording of the Applicant's request referred to guidance shared with headteachers, and this information in the form of the minutes was shared with deputy headteachers, it considered the distinction to be negligible and that the information should have been disclosed as within scope.
19. The Authority apologised to the Applicant for not providing the information to her at the time of her request.

The Commissioner's view on the information disclosed during the investigation

20. The Commissioner has carefully considered the wording of the Applicant's request, which specified information issued to headteachers (as opposed to staff or schools, which would have widened the scope of the request).
21. Given that this information was issued to deputy headteachers, and given the Applicant's request specified information which was sent to headteachers, the Commissioner does not agree with the Authority's view that the minutes fall within scope of the request. He considers that (while the information was related to the subject matter of the request and almost certainly of interest to the Applicant) the information provided falls outwith the scope of the request as it was not information provided to headteachers. In his view, there is a distinction between information provided to a deputy headteacher and information provided to a headteacher.
22. As the Commissioner has found this information to be out of scope of the request, he will not consider it any further in this decision.

Was further information held by the Authority?

23. The Commissioner will now consider whether further information was likely to have been held which did fall within scope of the request.

The Applicant's comments

24. In this case, the Applicant stated that she was dissatisfied with the outcome of the Authority's review because she had "evidence" that guidance was sent to schools before she made her request for information. While the Applicant accepted that the updated policy (provided to her on 2 October 2025) was not available for public sharing at the time of her request, she stated that it was incorrect for the Authority to say that guidance had not been issued (prior to the policy being publicly shared).
25. The Applicant submitted that she had evidence to support her position, having had sight of emails sent out to headteachers across the Authority's schools from its education department and she provided the Commissioner with copies of emails between her, the school, the Authority, and the therapist.
26. The Applicant provided a timeline of correspondence in relation to her appeal. She stated that on 18 August 2025 a named deputy headteacher at a named school had confirmed in writing the agreed timings for a block of Speech and Language Therapy (SLT), with a named therapist, for the Applicant's child.

27. The Applicant explained that on 21 August 2025 the therapist advised her that a different deputy head had informed her (the therapist) that following a meeting with the Authority, independent therapists were no longer allowed into the Authority's education settings, whereupon the Applicant contacted the school.
28. On 22 August 2025, the Applicant stated that a named staff member rang her husband and cited "safeguarding" as the reason for the change.
29. On 23 August 2025, the Applicant stated that she and her husband were inadvertently copied into an email from the headteacher to other Authority staff which the Applicant submitted referred to the headteacher sending on "wording" and she provided the Commissioner with a copy of this email.
30. This email was less than a sentence long and stated: "I've hopefully sent you all wording from [part of word]".
31. The Applicant explained that later the same day, the headteacher sent a further email which stated that a new policy would be issued at the beginning of the following month and the school would not enter into any new agreements with private specialists until the policy was presented at education committee, to ensure it did not set up arrangements which could not be sustained.
32. On 1 September 2025, the Applicant was advised by the school that the Authority was reviewing its practices towards private practitioners working in schools and, that whilst the school awaited this, it was unable to confirm or arrange any visits and it stated that the updated ASL policy was awaiting approval.
33. In addition to providing details of her communications with the Authority, the Applicant provided extracts from what she stated were emails from two headteachers to the therapist regarding the policy and a contemporaneous note made by the therapist of a phone call with a third headteacher. However, she was unable to provide the Commissioner with full copies of the original correspondence.

The Authority's comments

34. The Authority stated that at the time of the initial request, it had not issued any policy to schools, including headteachers, addressing work with privately arranged therapists, instructors, tutors or practitioners in schools and it added that there was not (and had never been) a standalone policy addressing these matters.
35. It explained that the education service was at the time revising the existing ASL policy, which did not (at that time) contain any provisions for such work, and that the service leadership team planned to add such provisions to the policy, but that this new revised version had not been issued to schools at the time of the Applicant's request.
36. Regarding whether guidance had been issued, the Authority stated that its Link Officer had a conversation with staff at the school attended by the Applicant's child to make them aware of possible changes to the ASL policy in relation to this work. It stated that this advice was verbal and not issued in recorded form and it submitted (in a timeline) that this conversation took place in August 2025 (it did not specify an exact date but indicated that it was before the external therapist contacted the Authority).
37. The Authority stated that the therapist wrote to the Link Officer on 21 August 2025, requesting clarification of the Authority's policy on working with private therapists in school.

They were subsequently provided with a written update but the Authority submitted that this information was not within scope of the request because it was not issued to schools. The Authority provided the email chain between the therapist and the Authority to the Commissioner.

38. The Authority stated that the Applicant had provided it with extracts from emails from headteachers on 6 October 2025, following its review outcome. In its comments to the Commissioner, it argued that the source of the Applicant's claim that headteachers had already received written guidance was unclear, because the Applicant had not provided any details which would allow it to verify her claims.
39. The Authority commented that if the Applicant wished to provide further details of the headteacher or school she believed held relevant information, and when the guidance was purportedly issued, then it would investigate further. However, the Authority argued that, in the absence of such details, it held no evidence or reason to believe that it held information within scope of the Applicant's request at the time it was received.
40. In answer to questions from the Commissioner's office about how headteachers were made aware that the policy was being updated and guidance drawn up in advance of the policy being finalised, the Authority referenced the meeting with depute headteachers discussed in paragraphs 15-17. It explained that headteachers were collectively notified of the change to the policy on 24 September 2025 via the Education Bulletin Number 4, an excerpt of which it provided to the Commissioner.
41. The Authority provided the Commissioner with some information about the searches it had carried out for information falling within scope of the Applicant's request. It stated that the initial request was received by its Freedom of Information team and circulated to its Quality Improvement Manager (Education) and Business Support Officer – School Support.
42. The Authority submitted that its Quality Improvement Manager advised, based on her personal knowledge as the responsible officer for development of the new policy, that they were in the process of updating the ASL policy to include a section addressing the subject of the Applicant's request, but that this was not published. A response of "information not held" was returned to the Authority's Freedom of Information team.
43. The Business Support Officer confirmed that the information requested was within the remit of the Quality Improvement Manager.
44. The Authority stated that it was correct to cite s17(1) of FOISA in relation to the request as it did not hold information within scope of the request at the time it was received. However, it stated that, out of a desire for transparency, it had issued the Applicant with a copy of the new version of the policy including the wording relevant to her request.

The Commissioner's view

45. In determining whether a Scottish public authority holds the information requested in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, considering the terms of the request and all other relevant circumstances.
46. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.

47. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it holds no more information than it has identified and located in response to the request. In this case, the Commissioner is not satisfied that the Authority has achieved this.
48. Where an authority has told a requester that it does not hold particular information, evidence of the authority's searches will usually be a key consideration during the Commissioner's investigation. As a minimum, authorities should be able to provide the Commissioner with the following information:
- (i) details of the records or locations which were searched.
 - (ii) why these were the relevant records and locations.
 - (iii) the keywords used.
 - (iv) which staff were involved and why they were considered relevant.
 - (v) the outcome of the searches.
 - (vi) evidence that the searches have been carried out, including the outcome of the searches.
49. The Commissioner acknowledges the Applicant's view that she had (or had seen) evidence that guidance was issued to headteachers before she made her request for information. However, while the Applicant provided him with extracts of emails which she stated came from headteachers, the Commissioner has not been provided with full copies of these emails which would allow him to consider who sent and received them. In particular, the Commissioner notes that the details of the emails (including the names/email addresses of the sender/recipient and the dates and times recording when the emails were sent) was not provided to him by the Applicant.
50. Without these full original versions, the Commissioner is unable to verify the extracts provided to him and he, therefore, cannot take them into account in this Decision. He considers that while the Applicant may sincerely believe that they provide evidence of her position that headteachers were provided with guidance before she made her request, in the absence of the full versions he is unable to reach a view on this. Given the lack of supporting details, the Commissioner cannot conclude that these extracts provide evidence that information within scope of the request was held at the time the request was made.
51. The Commissioner has also carefully considered the brief email into which the Applicant was inadvertently copied and its reference to "wording". The email contains seven full words and an incomplete eighth word, which from the context appears to be the start of a name. The Commissioner's view is that there is no evidence within the email as to the source of the "wording" referenced (for example, whether it came from within or outwith the school). He does not consider that it is possible to ascertain from the email what wording was being referenced, nor can he conclude that "wording" was intended to be taken as meaning "guidance" or even to relate to guidance.
52. The Commissioner cannot therefore accept that the content of the email above is evidence that further information within scope of the request is held (or was held at the time of the request).

53. The Commissioner has considered the Authority's submissions on the searches it carried out. He notes that while the Authority provided a narrative of staff who were consulted, it has not provided him with evidence of its searches. In particular, the Authority has not provided him with any screenshots evidencing searches that were carried out, or details of the search terms used, or information about which locations were searched.
54. He also notes that the Authority has stated that the particular school which the Applicant's child attended was updated verbally, and that no notes were taken of this conversation. However, the Authority has not provided him with any evidence of the searches carried out for any notes or information relating to this conversation (to substantiate its view that no written record was held) nor has it provided evidence of any other searches that were carried out.
55. The Commissioner notes that it is not clear whether the minutes disclosed during the investigation (regardless of the fact that he considers this information to be outwith the scope of the request) were located as a result of systematic searches or came to light as a result of the member of staff simply recollecting the meeting during the investigation and then locating the minutes.
56. The Commissioner can only reach a view on the circumstances of any appeal from the submissions and evidence which have been provided to him. In this case, while the Commissioner is by no means persuaded that the Authority held information falling within scope of the request at the time the request was received, he cannot be satisfied that no information was held, given the lack of search evidence provided by the Authority.
57. The Commissioner cannot find (on the evidence which was submitted to him) that the Authority was entitled to give the Applicant notice, under section 17(1) of FOISA that it did not hold the information requested.
58. The Commissioner therefore requires the Authority to carry out adequate and proportionate searches for information falling within scope of the Applicant's request and to provide the Applicant with a revised review outcome, based on the outcome of those searches. He also requires the Authority to retain evidence of the searches carried out, in case of a further appeal to the Commissioner.

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.

Specifically, the Authority has failed to satisfy the Commissioner that it does not hold the information requested. As a result, he finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out adequate and proportionate searches, and to retain evidence of these searches, and to provide the Applicant with a revised review outcome by **3 August 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.

Jennifer Ross
Deputy Head of Enforcement

19 June 2026