



Scottish Information
Commissioner
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Decision Notice 173/2026

Rotas for medical trainees and locally employed doctors

Authority: Tayside Health Board
Case Ref: 202501958

Summary

The Applicant asked the Authority for information relating to rotas for medical trainees and locally employed doctors. The Authority stated that it did not hold the information requested. The Commissioner investigated and found that the Authority had failed to interpret part of the Applicant's request correctly and otherwise had failed to carry out searches for the information requested by the Applicant. The Commissioner required the Authority to reconsider the Applicant's request, carry out adequate and proportionate searches for the information requested and issue the Applicant with a revised review outcome.

Relevant statutory provisions

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

Background

1. On 3 September 2025, the Applicant made a request for information to the Authority. Among other things, they asked for:

"For each of the main rotational start dates for medical trainees and locally employed doctors in August 2023, February 2024, August 2024, February 2025, and August 2025 please provide:

- 1) The total number of resident doctor rotas that were issued to resident doctors less than six weeks prior to the rota start date. Please provide this information broken down by hospital, division and specialty for each of the rotational start dates.
- 2) The total number of individual resident doctors who received their rota less than six weeks prior to its start date.
- 3) The specific dates on which the health board received the definitive lists of incoming trainee allocations from NHS Education for Scotland (NES).

...

- 5) Of the rotas identified in question 1 as being issued late, for how many of these instances is there a record of proactive communication being sent to the affected resident doctors to inform them of the delay ahead of time?"

2. The Authority responded on 19 September 2025. It informed the Applicant that the information requested could not be provided as it was not stored in a central location or readily available format (it being the responsibility of each service's rota coordinator to issue rosters), and it noted that collation of that information "across all services" would place a significant burden on the Authority. It therefore issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
3. On 20 September 2025, the Applicant wrote to the Authority requesting a review of its decision. They stated that they were dissatisfied with the decision because the Authority had not disclosed the information requested despite rotas and communications being held by individual coordinators (and therefore by the Authority). They also queried the Authority's reference to significant burden, which they considered related to section 12 (Excessive cost) of FOISA, and which it had not justified.
4. The Authority notified the Applicant of the outcome of its review on 13 October 2025. The Authority fully upheld its original decision and explained that:
 - While its 35 rota coordinators might retain local records, the Authority did not maintain a "consolidated data set" enabling it to respond to the request, and emails were considered transient correspondence which were not subject to record declaration or retention schedules
 - Given the absence of a requirement for central oversight, it was not confident in collating the information in a "robust and reliable manner" (and attempting to do so would place an unreasonable burden on it)
 - NHS Education for Scotland (NES) might hold information satisfying part 3 of the Applicant's request.
5. On 24 October 2025, the Applicant 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 for the reasons set out in their requirement for review and because previous decisions from the Commissioner had confirmed that authorities were expected to take reasonable steps to locate information in decentralised systems (and poor records management was not a reason to rely on section 17(1) 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 13 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. 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 the Authority interpreted the Applicant's request and how it established what information it held falling within the scope of that request.

Commissioner's analysis and findings

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

Section 17(1) – 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 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.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. This is not necessarily to be equated with information an applicant believes the authority should hold. 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.

The Applicant's submissions

12. The Applicant considered that the Authority's responses to their request and requirement for review had demonstrated that it held information falling within the scope of their request.
13. The Applicant stated that information held within the email accounts of 35 rota coordinators referred to by the Authority constituted recorded information for the purposes of FOISA. They submitted that maintaining that such information was "transient correspondence" not subject to records management or retention, or otherwise not being "held" in a centralised or accessible format, was not a valid reason to rely on section 17(1) of FOISA.

The Authority's submissions

14. The Authority explained that it had interpreted the Applicant's request as follows:
 - Parts 1 and 2 for aggregated statistical information on rotas which had been issued late
 - Part 3 for specific dates of NES allocation lists
 - Part 5 for evidence of proactive communications regarding delayed rotas.

15. The Authority noted that each part of the request sought information across all its hospitals, specialities, divisions and rota coordinators, covering multiple rotational years.

Parts 1, 2 and 5 of request

16. With regard to parts 1, 2 and 5 of the Applicant's request, the Authority stated that it did not hold the information requested in any centralised, corporate or retrievable format.
17. The Authority explained that rotas for resident doctors¹ were created and issued by approximately 35 rota coordinators across multiple specialties and sites. These rotas, and any associated communications, were issued as operational emails which were not subject to any requirement for centralised storage, record declaration or long-term retention. It confirmed that it did not operate a rota management system, shared repository, database, monitoring process or record-keeping requirement which would result in the information existing as an organisational record.
18. The Authority also submitted that coordinators frequently changed over time, some coordinators who had issued rotas over the period described in the Applicant's request had left the organisation and it did not maintain a list of all current and historical rota coordinators.
19. While it considered that "transient information" may have existed locally at some point within individual mailboxes, it stated that such information was not retained in any "searchable or structured way", nor as a corporate record.
20. The Authority contended "held" under section 17(1) of FOISA required information "to be recorded, retained and retrievable by an authority", which was not the case for rota correspondence. Accordingly, it maintained that it had been correct to apply section 17(1) to parts 1, 2 and 5 of the Applicant's request.
21. Given the above, the Authority confirmed that it had not carried out searches of individual rota coordinator mailboxes in response to the Applicant's request. This decision was made on the basis of "established operational knowledge of how rota information is created, used, and not retained within the organisation".
22. The Authority submitted that any mailbox searches would be "ad-hoc, incomplete and incapable of yielding a reliable or authoritative dataset". It further considered that conducting searches of individual mailbox accounts, particularly where the population of accounts could not be accurately identified, would not have been capable of retrieving information "held" and would instead amount to an attempt to reconstruct or create information "that does not exist as a corporate record".
23. The Authority argued that FOISA did not require authorities to create new information or reconstruct datasets from transient operational communications which had not been retained as corporate records.
24. On that basis, the Authority stated that it determined that section 17(1) of FOISA applied to parts 1, 2 and 5 of the Applicant's request and that carrying out mailbox searches was not necessary or appropriate in order to reach that conclusion.

Part 3 of request

25. With regard to part 3 of the Applicant's request, the Authority explained that prior to each rotation, its Medical Staffing team received a high-level timetable of the national recruitment

¹ <https://www.bma.org.uk/media/fx2kzkh1/20250152-doctors-titles-explained-updated-2025.pdf>

and allocation process. However, while the timetable provided a broad sequence of events, it did not constitute a complete or final allocation dataset.

26. The Authority explained that its Medical Staffing team received regular updates (which were often weekly) throughout the pre-rotation period and that those updates were subject to frequent change due to various factors, including trainees declining posts. It further noted that the timetable did not account for Less than Full Time (LTFT) applications, which were received at short notice and had significant implications for rota design.
27. The Authority stated that the information provided by NES was “limited to workforce allocation and process tracking”. It explained that NES did not supply “rota issue dates; records of when individual services communicated rotas to trainees; any monitoring of late rota circulation, or operational correspondence which would enable the Authority to determine whether rotas were issued on time”.
28. The Authority considered that, while it received process-level information from NES, that information did not include any of the data sought in part 3 of the Applicant’s request.

Significant burden

29. Notwithstanding its reference in its initial response and review outcome to the significant/unreasonable burden of responding to the Applicant’s request, the Authority confirmed that it was relying on section 17(1) for parts 1, 2, 3 and 5 of the Applicant’s request in this case – not section 12(1) of FOISA.
30. The Authority recognised that its review outcome could have more clearly “separated information not held” from “cost of collation” and stated that it would be clearer in future responses to information requests “where multiple sections [of FOISA] may be relevant”.

The Commissioner’s view

31. The Authority claims that it does not hold the information requested by the Applicant.
32. In considering whether a Scottish public authority holds the requested information in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
33. 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.
34. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).
35. In this case, notwithstanding the opportunity given to provide comments, the Commissioner is not satisfied that the Authority has achieved this.
36. As a starting point, the Commissioner is satisfied that the Authority’s interpretation of the scope of parts 1, 2, and 5 of the Applicant’s request was reasonable and would have – had adequate and proportionate searches been undertaken – been likely to have identified any relevant information it for these parts of the request.

37. However, in respect of part 3 of the Applicant's request, read properly in light of the Applicant's use of the term "definitive", the Commissioner cannot agree that the Applicant's request was restricted to a single "complete or finalised dataset".
38. In the Commissioner's view, the more reasonable interpretation of "definitive" is capable, in this particular context, of including an allocation list or update which, when received by the Authority, represented NES's allocation for the relevant rotation and provided the basis on which the Authority was expected to base rota planning for that rotation (even if later changes or withdrawals were made).
39. In the circumstances, the Commissioner considers the relevant question is whether one or more lists or allocation updates for the specified rotations were received from NES which matched the description in the preceding paragraph, rather than whether NES supplied a single complete or finalised dataset or a dataset explicitly marked as "definitive".
40. The Commissioner notes that the Authority's submissions suggest that it received regular "workforce allocation" updates from NES and that, while NES provided it with workforce allocation and process-tracking information, it did not provide the specific information rehearsed at paragraph 27 and so the Authority did not receive "any of the data sought in part 3 of the Applicant's request".
41. As stated above, the Commissioner does not consider that the fact that these updates were regular or potentially subject to later change precludes one or more of those allocation lists or updates from being reasonably interpreted as providing the Authority's basis for rota planning for that rotation. That is, as being "definitive" for the purposes of, and in the particular context of, part 3 of the Applicant's request.
42. In light of the above, the Commissioner cannot agree that the Authority was correct to interpret part 3 of the Applicant's request as it did. However, he must stress that part 3 of the request should not be read as extending to every process-level update from NES. Instead, as stated above, the Authority should consider whether any list or update provided by NES provided the basis on which the Authority was expected to base rota planning for the relevant rotation.
43. In all of the circumstances, the Commissioner therefore finds that the Authority failed to correctly interpret part 3 of the Applicant's request. Consequently, it failed to comply with section 1(1) of FOISA.
44. While, as stated above, the Commissioner is satisfied that the Authority correctly interpreted parts 1, 2 and 5 of the Applicant's request, the Authority confirmed that it did not carry out searches for the information requested. Furthermore, notwithstanding his finding that the Authority failed to correctly interpret part 3 of the Applicant's request, the Commissioner has also not received any evidence that the Authority carried out searches for information falling within the scope of that part of the request.
45. As no searches for the information requested have been carried out in this case, the Commissioner cannot uphold the Authority's claim that it does not hold the requested information. He requires the Authority to carry out fresh searches for the information, giving particular attention to paragraphs 38-39 and 41-42 as they relate to the proper interpretation of part 3 of the Applicant's request.
46. For the reasons set out above, the Commissioner cannot, based on the submissions he has received, find that the Authority was correct to give the Applicant notice, in terms of section

17(1) of FOISA, that it did not hold the information requested in parts 1, 2, 3 and 5 of their request.

47. The Commissioner therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA).
48. In the circumstances, the Commissioner must also comment on the Authority's interpretation of information "held" for the purposes of FOISA, which clearly informed its decision not to carry out searches in response to the Applicant's request. He understands the Authority's position to be as follows:
- FOISA applies to information captured as a corporate record (solely) and not to "transient" information, such as emails
 - Information must be organised in some way before it may be considered "held" for the purposes of FOISA
 - Searches of emails returning "ad-hoc, incomplete" information not comprising an "authoritative dataset" would equate to the creation of new information (and so would not be "held" for the purposes of FOISA)
 - It was reasonable to rely on section 17(1) of FOISA without carrying searches, given the above.
49. The Commissioner's [guidance on section 17\(1\) of FOISA](#)² makes clear (at paragraphs 41 and 42) that:
- "Information" is defined in FOISA as "information recorded in any form", so an authority should identify and consider all recorded information covered by a request when responding."
 - "The information does not have to be complete, accurate or comprehensive before it can be disclosed. If recorded information is covered by the terms of the request, it must be considered for disclosure, whatever its status. Authorities may choose to provide a commentary which places the information in context or explains its limitations."
50. Furthermore, 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](#))³ states (at paragraphs 6.2.3 and 6.2.4) that:
- "Any information created or exchanged by a Scottish public authority, and which relates to that authority's business, is held by that authority for the purposes of FOISA and the EIRs."
 - "Authorities therefore should not be restricted to considering only the official corporate record, and should think beyond conventional places where information might be held to satisfy themselves that full and robust searches have been undertaken. Staff should be aware of the full range of systems on which information may be held, or at least where to

² <https://www.foi.scot/sites/default/files/2022-03/BriefingSection17Informationnotheld.pdf>

³ <https://www.gov.scot/publications/foi-eir-section-60-code-practice/>

find internal guidance or advice about this. They should make appropriate arrangements for all relevant systems to be searched in response to requests.”

51. In short, the Commissioner would remind authorities that declaring information as a record (or not) is not determinative of whether or not that information is “held” for the purposes of FOISA or the EIRs. In particular, he would note that:
- Information stored in individual staff emails, whether deemed transient or of sufficient importance to be stored centrally/as a corporate record, is still recorded information for the purpose of FOISA and the EIRs and therefore falls to be searched for and considered for disclosure in response to a request for information
 - Information does not need to be collated, complete or accurate before it can be considered for disclosure in response to a request for information (although generally it will be desirable to explain where information is known to be incomplete or inaccurate, by way of advice and assistance in terms of section 15 of FOISA)
 - Evidence of a public authority’s searches will usually be a key consideration during the Commissioner’s investigation of an information not held response (unless, exceptionally, there are compelling reasons for why searches were not required).
52. In the Commissioner’s view, the Authority’s approach to this request has betrayed a fundamental misunderstanding of a basic principle of FOISA. Given the age and maturity of this legislation and the number of information requests the Authority has handled since it came into force, he finds this misunderstanding concerning and difficult to understand.
53. Given the Authority’s submissions at paragraph 30, the Commissioner would also remind public authorities that the cost of collation of information has no bearing on whether that information is held for the purposes of FOISA or the EIRs.

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 Commissioner finds that the Authority failed to comply with Part 1 of FOISA (in particular, section 1(1)) by not correctly interpreting part 3 of the Applicant’s request and by failing to satisfy him that it does not hold the information requested in parts 1, 2, 3 and 5 of the Applicant’s request.

The Commissioner therefore requires the Authority to reconsider part 3 of the Applicant’s request, carry out adequate and proportionate searches for the information requested in parts 1, 2, 3 and 5, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **14 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.

Euan McCulloch
Head of Enforcement

30 June 2026