



Scottish Information  
Commissioner  
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# Decision Notice 178/2026

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## Whether request was repeated

Authority: Crown Office and Procurator Fiscal Service  
Case Ref: 202600036

### Summary

The Applicant asked the Authority for information relating to a full list of prosecutors at Dundee Procurator Fiscal office. The Authority refused to comply with the request as it considered it to be a repeated request. The Commissioner investigated and found that the Authority was entitled to refuse to comply with the request on the basis that it was repeated.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 47(1) and (2) (Application for decision by Commissioner); 48(c) (When application excluded)..

### Background

1. On 6 October 2025, the Applicant sent a request for information to the Authority in which he asked for “a full list of prosecutors staff at Dundee procurator fiscal office”.
2. The Authority responded on 8 October 2025. It informed the Applicant that, under section 14(2) of FOISA, it would not provide a response as it considered the request to be substantially similar to his previous request of 1 October 2025.
3. Later that same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because the Authority had “refused” his request and he asked for a review by someone was not “biased”.

4. The Authority notified the Applicant of the outcome of its review on 9 October 2025, which fully upheld its original decision without modification.
5. On 5 January 2026, 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 it was biased and he had the right to receive the information requested.

## **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 23 April 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, related to its application of section 14(2) of FOISA.

## **Commissioner's analysis and findings**

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

### ***Section 14(2) – Repeated request***

10. Under section 14(2) of FOISA, where an authority has complied with an information request, it is not obliged to comply with a subsequent request from the same person which is identical or substantially similar, unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
11. For section 14(2) of FOISA to apply, therefore, the following need to be considered:
  - (i) whether the Applicant's previous request was identical or substantially similar to the request under consideration;
  - (ii) whether the Authority complied with the previous request; and, if so
  - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request.

### ***Is the request identical or substantially similar to the previous request?***

12. The Authority provided a copy of the previous request submitted by the Applicant on 1 October 2025. Among other things, this request asked for "a list of the public prosecutors and staff at Dundee procurator office".
13. As noted above, in his request of 6 October 2025, the Applicant asked for "a full list of prosecutors staff at Dundee procurator fiscal office".

14. The Commissioner has carefully considered the specific terms of both requests. Having done so, he considers they are substantially similar. As such, he is satisfied that both requests are seeking essentially the same information.
15. The Commissioner is therefore satisfied that the Applicant's request of 6 October 2025 is substantially similar to his previous request of 1 October 2025.

*Was the previous request complied with?*

16. The Commissioner has had sight of the Applicant's previous request of 1 October 2025 and the Authority's response of 2 October 2025, in which it withheld the information requested under the exemptions in sections 38(1)(b) and 39(1) of FOISA.
17. Having considered the content of the Authority's response, the Commissioner is satisfied that the Authority complied with the previous request for the purposes of section 14(2) of FOISA. He makes no finding in this decision on whether the Authority was entitled to rely on the exemptions it applied in its response to the previous request.

*Has a reasonable period of time passed?*

18. There is no definition of "a reasonable period of time" in FOISA: what is reasonable will depend on the circumstances of the case. However, consideration can be given to questions such as:
  - (i) Has the information changed?
  - (ii) Have the circumstances changed?
19. As the Commissioner has already determined, the information requested in this, and the previous, request is substantially similar. He accepts that neither the information sought nor the circumstances, other than the passage of time, have altered in this case.
20. The Commissioner considers that the simple passage of time between requests may eventually be sufficient to allow the conclusion that a reasonable period of time has passed between two identical or substantially similar requests, irrespective of whether there has been any other change in the circumstances surrounding the requests.
21. However, the Commissioner agrees with the Authority that a reasonable period of time has not passed in this case. The request in this case was submitted five days after the previous request. Given that the Authority's response to the previous request was that the information was exempt from disclosure, the Commissioner does not consider it would have been reasonable to expect the Authority to take a different approach to the subsequent request.
22. In all the circumstances, the Commissioner finds that the Authority was not obliged to comply with the Applicant's request for information, and that it was entitled to rely on section 14(2) of FOISA.

***Handling matters***

23. During the investigation, the Authority confirmed that it had not received a requirement for review from the Applicant in relation to his previous request of 1 October 2025.
24. The Authority also confirmed that it did not take steps to establish whether the Applicant's request of 6 October 2025 was an attempt to seek a review of its response to his previous request. It explained it considered it to be a new request for information because the Applicant had sent it from a new email address and had narrowed it to focus only on the list

of employees. (The previous request of 1 October 2025 included an additional request relating to a named individual.)

25. In the circumstances and having considered its terms, the Commissioner is satisfied that the Applicant's request of 6 October 2025 was a valid request and that the Authority was correct to treat it as a new request rather than as a requirement for review of its response to the Applicant's previous request.
26. However, given the similarities between the requests and the lack of time that elapsed between them being made, the Commissioner considers that the Authority should, by way of advice and assistance under section 15 of FOISA, have taken steps to establish whether the Applicant intended his request of 6 October 2025 to be a requirement for review of the Authority's response to his previous request of 1 October 2025. If so, it should have advised him how to make a valid requirement for review.
27. During the investigation, the Authority, at the Commissioner's suggestion, stated that it would be willing to exercise its discretion and accept a late requirement for review from the Applicant, in terms of section 20(6) of FOISA, in relation to his previous request of 1 October 2025.
28. The Commissioner advised the Applicant of this option and explained that it would allow the Applicant to challenge the substance of the Authority's response (i.e. whether it was entitled to withhold the information requested under the exemptions in sections 38(1)(b) and 39(1) of FOISA).
29. However, the Applicant informed the Commissioner that he did not wish to submit a requirement for review in relation to his previous request and that he instead required the Commissioner to reach a decision on his application in respect of his request of 6 October 2025.
30. The Commissioner is, of course, subject to section 48(c) of FOISA, which provides that no application may be made to the Commissioner for a decision under section 41(1), as respects a request for review made to the Lord Advocate (who has ministerial responsibility for the Authority), to the extent that the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland. The Authority has not argued that section 48(c) applies in this case and, in all the circumstances, the Commissioner is satisfied that this is the case and that he has the authority to make this decision. In doing so, however, he is giving no indication as to whether any future application on the same or similar subject matter will (or will not) necessarily fall within the terms of section 48(c).

## **Decision**

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

## **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.

**Euan McCulloch**  
**Head of Enforcement**

**1 July 2026**