



Scottish Information
Commissioner
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Decision Notice 179/2026

Whether information request was valid

Authority: Scottish Public Services Ombudsman
Case Ref: 202502016

Summary

The Applicant asked the Authority several questions relating to its powers, duties and decision-making processes. The Authority responded to these questions but did not do so in terms of FOISA. The Commissioner investigated and found that two of the questions asked were valid requests for information and that the Authority should therefore have responded to it in terms of FOISA. He required the Authority to conduct a review in terms of FOISA in respect of these two questions and to notify the Applicant of the outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 8 (Requesting information); 20(1) and (3) (Requirement for review of refusal etc.); 21 (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner); 73 (Interpretation) (definition of “information”).

Background

1. On 2 October 2025, the Applicant contacted the Authority and asked it to provide “clarification” on the following points:
 - (i) “Is a disabled service user legally obliged to follow a public body or authority’s internal complaints procedure to have their concerns or complaint addressed? Or is it correct that there is no such legal obligation, and that this is instead a procedural requirement

which the [Authority] may take into account when deciding whether to accept a complaint?

- (ii) Can a public body lawfully dismiss a complaint and state: “you must now go to the SPSO” — even where the matters raised involve an unresolved service failure, a continuing breach of duty, or a breach of statutory or common law rights?
 - (iii) Where there are unresolved service failures or ongoing breaches of common law or statutory duties, and a disabled service user asks a public body or authority reasonable questions in order to make a complaint — but these are dismissed or not answered — would the SPSO treat this as an important factor and take it into account in deciding whether to investigate?
 - (iv) Where a private company is carrying out work on behalf of a public body and performing functions of a public nature, does the [SPSO consider the public body remains accountable for the quality and lawfulness of those services (for example, under a non-delegable duty of care)?
 - (v) When making decisions, does the SPSO take into account whether there have been breaches of common law duties, statutory obligations, or relevant professional standards, even if the SPSO does not make a formal legal ruling?
 - (vi) Does the [SPSO have the power to investigate ongoing, unresolved service failures — particularly where these involve potential breaches of statutory or common law duties — provided the complaint is made within the 12-month timeframe?”
2. The Authority responded on 8 October 2025. It provided a response to each question, but it did not do so in terms of FOISA.
 3. On 21 October 2025, following intervening correspondence, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because the Authority’s response did not provide any recorded information, confirm whether the information requested was held or cite any exemptions. As such, she considered the Authority’s response failed to comply with sections 1(1) and 15(1) of FOISA.
 4. The Authority responded to the Applicant’s requirement for review on 31 October 2025. It informed her that it had not treated her questions as a request under FOISA and, as such, it was not “able to review it in line with FOISA”.
 5. On 5 November 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated she was dissatisfied with the outcome of the Authority’s review because she considered that her request was valid under FOISA and the Authority had not provided her with the information she had 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 2 February 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 why it did not respond to the Applicant's questions under FOISA.
9. The Commissioner's decision notice will only consider questions (v) and (vi) in the Applicant's correspondence of 2 October 2025 as he has determined that the remaining questions did not constitute valid requests for information under FOISA.

Commissioner's analysis and findings

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

Validity of the request

11. Section 8(1) of FOISA sets down the basic requirements for a valid request for information made in terms of section 1(1):
 - (a) it is in writing or another form which, by reason of it having some permanency, is capable of being used for subsequent reference
 - (b) it states the name of the applicant and an address for correspondence; and
 - (c) it describes the information requested.
12. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not require a public authority to provide information which is not held in recorded form.

The Applicant's submissions

13. Although questions (v) and (vi) were phrased as questions, the Applicant said that her aim was to obtain recorded information about the Authority's powers, duties and decision-making framework when carrying out its functions. She said that she understood that a request for information framed as a question may still constitute a valid request for recorded information under FOISA, where it could be reasonably interpreted as seeking recorded information held by a public authority.
14. The Applicant submitted that questions (v) and (vi) reasonably related to "recorded information that the Authority [was] likely to hold, such as internal guidance, case assessment procedures, complaint admissibility guidance, or other internal policy documents used by staff when determining whether to investigate complaints". She considered that these questions sought access to recorded information about the Authority's obligations and powers, rather than a personal opinion or hypothetical explanation.

The Authority's submissions

15. The Authority explained that its powers and duties come (predominantly) from the [Scottish Public Services Ombudsman Act 2002](#)¹ and include the final stage for complaints about most devolved public service organisations in Scotland.

¹ <https://www.legislation.gov.uk/asp/2002/11/contents>

16. The Authority noted that its website gave advice about making complaints and about how it handled complaints. Alongside the option to make a general enquiry on the contact page of its website, there was the option to make an information request. However, it noted that the Applicant's correspondence of 2 October 2025 was made through the general enquiry route.
17. The Authority considered that it was clear that the Applicant was looking for clarification on a number of points regarding accessing and completing a public service organisation's complaints procedure and about what actions the Authority might take in certain circumstances.
18. With regard to questions (v) and (vi), the Authority considered that it provided the Applicant with clear advice that it had given initial guidance to her questions and that it would need more detail to be able to provide the "best advice" it could.
19. The Authority explained that it was difficult to directly answer questions (v) and (vi) without the Applicant providing further detail. Taken in context with the Applicant's correspondence of 2 October 2025 as a whole, the Authority considered that questions (v) and (vi) appeared to be asking it what its actions might be in particular circumstances, but they did not provide the Authority with enough detail for it to answer them. With more detail, the Authority acknowledged that its responses to these questions could potentially capture recorded information.

The Commissioner's view

20. The Commissioner has carefully considered the submissions of both the Applicant and the Authority, together with the terms of the questions (v) and (vi) in the Applicant's correspondence of 2 October 2025.
21. Having done so, the Commissioner is satisfied that the questions (v) and (vi) of Applicant's correspondence of 2 October 2025 satisfied all the requirements in section 8(1) of FOISA and that she submitted a valid request for information in respect of these questions.
22. While the Commissioner recognises the overall context of the request sought "clarification", he is satisfied that questions (v) and (vi) sought responses based on recorded information. However, he acknowledges that this conclusion is more finely balanced with respect to question (vi).
23. Given his above conclusion, the Commissioner must consider whether the Authority's response to questions (v) and (vi) complied with the relevant requirements of FOISA.
24. As rehearsed earlier, the Authority expressly stated that it did not respond to the Applicant's correspondence of 2 October 2025 in terms of FOISA. The Commissioner must therefore find that the Authority failed to comply with Part 1 of FOISA in respect of questions (v) and (vi) of the Applicant's correspondence of 2 October 2025.
25. That said, the Commissioner understands why the Authority did not identify the Applicant's correspondence of 2 October 2025 as an information request in terms of section 1(1). This is particularly so given the terms of the correspondence, which expressly stated that it sought "clarification" of a number of points and included a number of questions that the Commissioner has determined were not valid requests for information under FOISA.
26. The Commissioner notes the Authority's position that it required "more detail" from the Applicant in order to give the "best advice". In cases where a public authority considers a request unclear or otherwise open to interpretation, section 1(3) of FOISA allows a public authority to seek clarification from an applicant, to enable it to identify and locate the

information being requested. Depending on the circumstances, there may also be a duty to seek such clarification, in line with section 15(1) of FOISA.

27. As stated in previous decisions, a requester is not required to refer to FOISA when making an information request to a Scottish public authority. However, the Commissioner would note that doing so can help ensure FOISA requests are identified as such and dealt with appropriately. He would also encourage the Applicant to consider the guidance set out in his [Tips for Requesters](#)² in terms of ensuring that requests are worded to clearly request recorded information.

Validity of the requirement for review

28. Section 20(3) of FOISA provides that a requirement for review must be in writing or some other form of permanency, it must state the name of the applicant and an address for correspondence, and it must specify the request for information to which the requirement for review relates and the matter which gives rise to the applicant's dissatisfaction
29. While the Applicant's correspondence of 21 October 2025 contains some points that are not relevant to the Authority's obligations under FOISA, the Commissioner is satisfied that it expresses dissatisfaction that the Authority had refused to respond that correspondence (which included questions (v) and (vi)) in terms of FOISA.
30. The Commissioner therefore considers that the Applicant's correspondence of 21 October 2025 satisfied all the requirements in section 20(3) of FOISA and that she submitted a valid requirement for review in respect of questions (v) and (vi).
31. As rehearsed earlier, the Authority expressly stated that it did not respond to the Applicant's requirement for review in terms of FOISA. Consequently, the Commissioner finds that the Authority failed to comply with the requirements of section 21 of FOISA in responding to the questions (v) and (vi) of the Applicant's correspondence of 2 October 2025.

Next steps

32. As the Applicant submitted a valid request for information in respect of questions (v) and (vi) and a valid requirement for review in respect of these questions, but the Authority failed to respond in terms of FOISA, the Commissioner requires the Authority to issue the Applicant with a review outcome in terms of section 21 of FOISA
33. When issuing its review outcome, the Authority must either disclose the information requested to the Applicant, or, if it wishes to withhold it, ensure that it clearly identifies the information being withheld and justify and explain why that information is being withheld. If, having carried out adequate and proportionate searches, the Authority determined that it does not hold the information requested, it must give the Applicant notice to that effect, in terms of section 17(1) of FOISA.
34. The Commissioner also requires the Authority to provide advice and assistance to the Applicant, in terms of section 15(1) of FOISA, with a view to reaching a clear, and mutually shared, understanding of the scope of questions (v) and (vi) and, on that basis, to issue a review outcome in terms of section 21 of FOISA.

² https://www.foi.scot/sites/default/files/2022-03/Tips_for_Requesters.pdf

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.

In the circumstances, the Commissioner has concluded that questions (v) and (vi) of the Applicant's correspondence of 2 October 2025 to the Authority met the requirements of section 8(1) of FOISA. He has also concluded that the Applicant made a valid requirement for review in terms of section 20(3) of FOISA. On this basis, the Authority was under an obligation to respond to questions (v) and (vi) and the requirement for review in terms of FOISA.

The Commissioner therefore requires the Authority to conduct a review in relation to the Applicant's requirement for review (in accordance with section 21 of FOISA and in respect of questions (v) and (vi) only) and to notify her of the outcome, by **14 August 2026**. In doing so, he requires the Authority to have regard to the conditions set out in paragraphs 33 and 34 above.

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

1 July 2026