



Scottish Information
Commissioner
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Decision Notice 180/2026

Net Explosive Content of specified item

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202501867

Summary

The Applicant asked the Authority for information showing whether the Net Explosive Content (NEC) or weight of a specified item had been measured and, if not, whether this had been recorded. The Authority informed the Applicant that it did not hold the information requested. During the investigation, the Authority identified and disclosed the weight of a constituent part of the item but maintained that it did not hold the NEC or weight of the item itself. The Commissioner investigated and found that the Authority complied with FOISA in responding to the Applicant's request in some respects, but not others. He required the Authority to issue a revised review outcome in respect of part of the Applicant's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 15 (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 15 August 2025, the Applicant made a request for information to the Authority regarding a specified prosecution. Among other things, she asked for:

- (i) Any records showing whether the Net Explosive Content (NEC) or weight of the seized item in this case at the crime scene was measured.

...

- (iii) If no NEC or weight measurement was undertaken, please confirm whether Police Scotland recorded this fact.

2. The Authority responded on 22 August 2025. It informed the Applicant that the specified item had been dismantled by Explosive Ordnance Disposal (EOD) and that all laboratory analysis and forensic reporting had been carried out by Forensic Explosive Laboratory (FEL). On that basis, it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
3. On 24 August 2025, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because:
 - she did not agree that the Authority did not hold the information requested
 - if the information was held by another authority, then section 15(1) of FOISA required the Authority to provide appropriate contact details
 - if the information was not held, the Authority was required to explain why, given the seriousness of the case.
4. The Authority notified the Applicant of the outcome of its review on 7 October 2025, which upheld its original decision. It explained that it did not hold any information showing whether the NEC or weight of the specified item was measured at the crime scene and suggested that the Applicant contact FEL and/or COPFS, which would have been provided with all relevant examination reports.
5. Later that same day, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated that she was dissatisfied with the outcome of the Authority's review for the reasons set out in her requirement for review.

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 9 December 2025, the Authority was notified in writing that the Applicant had made a valid application, and 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, how it established what information it held falling within the scope of the request and whether it had provided appropriate advice and assistance to the Applicant.
9. During the investigation, and in response to questions from the Commissioner, the Authority issued a revised review outcome to the Applicant. It disclosed information on the weight of a constituent part of the specified item and apologised for its failure to do so earlier. However, it maintained that it did not hold an overall NEC or weight for the specified item.

10. The Applicant subsequently confirmed that she still wished to receive a decision from the Commissioner.

Commissioner's analysis and findings

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

Information disclosed during the investigation

12. As stated above, the Authority located information during the investigation on the weight of a constituent part of the specified item and disclosed this information to the Applicant.
13. The Commissioner is satisfied that information confirming the weight of a constituent part of the specified item would, on a reasonable interpretation, fall within the scope of part (i) of the Applicant's request.
14. While not the NEC or weight of the specified item itself, the Commissioner cannot see that the weight of a constituent part could be reasonably or logically excluded from the scope of the Applicant's request (given its terms and purpose) – a position the Authority appears to have accepted through disclosure of the information it identified during the investigation.
15. The Commissioner must therefore find that in failing to take adequate steps to identify, locate and provide that information by the date of its original review outcome (at the latest), the Authority failed to comply with section 1(1) of FOISA.

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

16. 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 in section 1(6) of FOISA are not applicable in this case.
17. 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. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
18. 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 lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
19. 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) actually held by the public authority.

The Applicant's submissions

20. The Applicant stated that given her request related to a High Court case involving alleged explosive material, it was reasonable to expect that the Authority would hold relevant information, even if later scientific measurement was carried out by another authority.

21. The Applicant submitted that the absence – or “apparent concealment” – of any NEC record went to the “core” of the case. She commented that it was the “single metric” determining whether a seized material constituted a minor firework composition or a potentially dangerous explosive under the relevant legislation.
22. The Applicant argued that the NEC record would be a factual benchmark that justified, or “exposed” as disproportionate, the Authority’s response in this case. That is, the Authority’s treatment of the incident as a major explosive-device event, involving specialist units and a subsequent High Court prosecution. If no NEC measurement had been undertaken, she considered that “crucial prosecutorial decisions” had been taken without the “key scientific data” required to determine risk and classification – contrary to basic evidential standards.
23. In respect of the Authority’s disclosure of the weight of a constituent part of the item specified, the Applicant submitted that her request was not limited to information regarding a constituent part of the item, but also whether the overall weight or NEC of the item was measured and, if not, whether that fact was recorded.

The Authority’s submissions

24. The Authority explained that it had interpreted the Applicant’s request as seeking any information held that included reference to either the weight or the NEC of the device. It stated that it held extensive information regarding the crime and the subsequent referral to the Crown Office and Procurator Fiscal Service (COPFS) for prosecution.
25. In undertaking searches for relevant information, the Authority reviewed the relevant Crime Report, Standard Prosecution Report and COPFS memos, and had consulted with its Enquiry Team, which confirmed that the specified item had been photographed and dismantled by EOD and transferred to FEL for all subsequent laboratory analysis and forensic reporting.
26. The Authority further explained that all productions for the case were logged on its “UNIFI” system, which identified the location of productions and, if applicable, where productions had been transferred to. Having reviewed UNIFI and relevant disclosure schedules, it was satisfied that all productions had been transferred to COPFS, either by the Authority or directly by FEL.
27. In support of the above, the Authority provided various documents to the Commissioner regarding, but not limited to, its searches, List of Productions, Location of Productions, and Crime Report.
28. The Authority noted that the Applicant’s request asked “whether the NEC or weight of the seized explosive item was measured”. It stated that there was nothing within its List of Productions which contained that information, and that the list confirmed that all relevant items had been transferred to FEL.
29. On that basis, the Authority stated that it was open to the Applicant to make an information request to FEL to establish if the item’s weight had been measured, or to COPFS which “would have been provided with all relevant examination reports”.
30. In summary, the Authority explained that some of the reports on its Production List “may” have included relevant information, but it no longer held this information as this had been passed to COPFS (rather than destroyed), in accordance with the “associated justice proceedings”.

31. During the investigation, and further to the explanation provided by the Authority in respect of the transferral of items to FEL and/or COPFS, the Commissioner asked the Authority to conduct further searches of emails and shared drives for a copy of an FEL report referred to in its submissions (as having been transferred to COPFS).
32. In response, the Authority confirmed that it had undertaken further searches of “the relevant shared drive area” and of the inboxes of “two reporting officers involved”. Having done so, it explained that it had located a copy of an “interim” FEL report (which it provided to the Commissioner). However, it noted that the information contained within the interim FEL report, to the extent it was relevant to the Applicant’s request, had already been disclosed to the Applicant during the investigation. Beyond this, it confirmed that it had located no further copy of the FEL report.

The Commissioner’s view

33. The Commissioner has considered carefully the submissions from both the Applicant and the Authority.

Part (i) of the request

34. The Commissioner considers that there is a distinction between information which may reasonably be treated as falling within the scope of part (i) of the Applicant’s request, and information which would answer part (i) in the more specific sense expected by the Applicant.
35. As stated above, the Commissioner has found that information about the weight of a constituent part of the specified item fell within the scope of part (i) of the Applicant’s request. However, that information did not confirm the NEC or weight of the specified item as a complete item.
36. The Commissioner accepts that the information disclosed during the investigation fell within the scope of part (i) of the Applicant’s request on a broad interpretation. However, disclosure of that information does not answer part (i) of the request in the more specific sense expected by the Applicant. In other words, it did not provide information confirming the NEC or weight of the specified item itself.
37. Given the explanations and submissions provided, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish whether it held information relating to the NEC or weight of the specified item itself.
38. The Commissioner considers that the Authority’s searches were (by the close of the investigation) reasonable in terms of who were asked to carry them out and the locations searched. He finds that the searches undertaken (by the close of the investigation) would be capable of locating any information which would confirm the NEC or weight of the specified item itself, had such information been held.
39. While the Applicant believed and expected that information to be held by the Authority, the Commissioner is satisfied, on balance, by the close of the investigation, that this is not the case. He has no locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information the authority actually holds.
40. The Commissioner therefore finds that the Authority was entitled to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold information confirming the NEC or weight of the specified item itself.

Part (iii) of the request

41. Part (iii) of the Applicant's request asked the Authority, if no NEC or weight measurement was undertaken, to confirm whether it recorded this fact.
42. In the circumstances, the Commissioner is not satisfied that the Authority has fully engaged with this part of the Applicant's request. In reaching this conclusion, he has carefully considered the Authority's submissions, together with the terms of part (iii) of the Applicant's request.
43. While the Authority stated that it had interpreted the Applicant's request as seeking any information held that included reference to either the weight or the NEC of the device, the Commissioner has been unable to identify any submission from the Authority indicating that it considered the specific terms of part (iii) of the request.
44. While the Authority confirmed that it did not hold an overall NEC or weight for the specified item, the Commissioner considers that part (iii) of the Applicant's request sought information on whether such a measurement was taken or such a weight was measured and, if not, whether that fact was recorded by the Authority.
45. In light of the above, the Commissioner considers that the Authority failed to fully engage with the scope of part (iii) of the Applicant's request. He therefore finds that the Authority failed to comply with section 1(1) of FOISA in this respect.
46. The Commissioner requires the Authority to reconsider part (iii) of the Applicant's request, conduct adequate and proportionate searches, reach a decision on the basis of these searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA).

Section 15 – Duty to provide advice and assistance

47. Section 15(1) of FOISA requires Scottish public authorities to provide advice and assistance to applicants, so far as it would be reasonable to expect them to do so.
48. Section 15(2) of FOISA provides that a Scottish public authority shall be taken to have complied with this duty if it conforms with the guidance contained in 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](#)¹).
49. The Applicant expressed dissatisfaction that the Authority, in directing her to FEL and/or COPFS for relevant information, failed to provide her with appropriate contact details for those authorities. She considered that this constituted a failure on the part of the Authority to comply with the duty to provide advice and assistance in terms of section 15(1) of FOISA.
50. The Authority recognised in its submissions to the Commissioner that it could have given more specific guidance regarding contacting FEL and/or COPFS.
51. The Commissioner's guidance on the [Content of Notices](#)² states (at paragraphs 11 to 12) that where an authority issues a notice, in terms of section 17(1) of FOISA, but knows who holds the information, it should "tell the requester and give them sufficient information to be able to make a request directly to them".
52. Furthermore, the Section 60 Code states (at paragraph 9.4.4) that:

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-practice/>

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

“Where an authority does not hold the information but is aware that it is held by another public authority, it should in its refusal notice provide the requester with contact details of the authority holding the information and suggest that the requester makes a new information request to that authority ...”.

53. It is clear that the Authority went beyond simply stating that it did not hold the information in question and instead suggested that the Applicant contact COPFS and/or FEL. To that extent, the Commissioner finds that the Authority complied with its duty under section 15 of FOISA.
54. However, while COPFS is a readily identifiable Scottish public authority whose FOI contact details are easily found, the same cannot be said of FEL. Having suggested that the Applicant contact FEL, the Commissioner considers that the Authority should have provided appropriate contact details to enable the Applicant to make an information request to FEL. In that respect, the Commissioner finds that the Authority failed to comply fully with its duty under section 15(1) of FOISA.
55. FEL is part of the Defence Science and Technology Laboratory (DSTL), which is an executive agency sponsored by the Ministry of Defence (MOD). The MOD is subject to the Freedom of Information Act 2000 (FOIA), not FOISA. The Applicant should therefore direct any request relating to FEL to DSTL. The freedom of information contact details for DSTL are available on the UK Government’s [webpage for DSTL](#)³.
56. Given that the advice and assistance he considers the Authority should have provided to the Applicant is set out in the preceding paragraph and the relevant contact details are available on the webpage linked above, the Commissioner does not require the Authority to take any action in response to its failure to fully comply with its duty under section 15 of FOISA.

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 Applicant.

The Commissioner finds that, in response to part (i) of her request, the Authority was entitled to inform the Applicant, in terms of section 17(1) of FOISA, that it did not hold the NEC or weight of the specified item.

However, the Commissioner finds that the Authority failed to comply with Part 1 (in particular, sections 1(1) and 15(1)) of FOISA by failing to:

- identify and disclose to the Applicant, until during the investigation, the weight of a constituent part of the specified item
- fully engage with part (iii) of the Applicant’s request
- provide adequate advice and assistance in relation to how to make a freedom of information request to FEL.

The Commissioner therefore requires the Authority to reconsider part (iii) of the Applicant’s request, conduct adequate and proportionate searches, reach a decision on the basis of these

³ <https://www.gov.uk/government/organisations/defence-science-and-technology-laboratory>

searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **11 September 2026**.

Given that the Authority has now disclosed the information to the Applicant that it should have disclosed by the date of its original review outcome (at the latest) and that the advice and assistance in relation to how to make a freedom of information request to FEL is set out in this decision notice, the Commissioner does not require the Authority to take any action in response to these failures.

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

28 July 2026