



Scottish Information
Commissioner
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Decision Notice 218/2026

Investigation concerning the murder of a named individual

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202501191

Summary

The Applicant asked the Authority for information relating to the investigation into the murder of a named individual in 1981. The Authority withheld the information under various exemptions in FOISA. The Commissioner investigated and found that the Authority had generally complied with FOISA in responding to the Applicant's request, but had wrongly withheld a small amount of information it identified during the investigation as being appropriate for disclosure. He required the Authority to disclose the wrongly withheld information to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 34(1)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations); 35(1)(a) and (b) (Law enforcement); 38(1)(b) (Personal information); 39(1) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 29 May 2025, the Applicant made a request to the Authority for information relating to an investigation into an unresolved murder in 1981. Among other things, he asked for:
...
 - 2) Any official summaries, statements, or updates that are publicly releasable.

- 3) Information on whether this case has ever been included in a cold case unit review or re-investigation.
- 4) Any documentation (appropriately redacted where necessary) that can be shared under FOI provisions.
2. The Authority did not respond to the information request.
3. On 27 June 2025, the Applicant wrote to the Authority, requiring a review in respect of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 10 July 2025. It informed him that it was withholding the information it held falling within the scope of the request, under the exemptions in sections 34(1)(b), 35(1)(a) & (b), 38(1)(b) and 39(1) of FOISA.
5. On 21 July 2025, 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 he disagreed that the exemptions applied and considered that the public interest favoured disclosure.

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 21 August 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant, and the case was subsequently allocated to an investigating officer.
8. During the investigation, the Authority notified the Commissioner that it considered providing the withheld information would be complex as it comprised voluminous hard-copy materials relating to the murder investigation held in offsite storage. In the circumstances, the Commissioner, by exception, considered it appropriate to proceed with his investigation on the basis of inventories of that information provided by the Authority.
9. 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 the exemptions in section 34(1)(b), 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA and its consideration of the public interest test.

Commissioner's analysis and findings

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

The withheld information

11. In this case, the information withheld from the Applicant by the Authority under the exemptions in sections 34(1)(b), 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA comprised several boxes of documents relating to the unresolved homicide in question.

The Authority's change of position during the investigation

12. During the investigation, the Authority changed position and confirmed that:
- with regard to part 3 of the Applicant's request, it was now content to disclose that a case review had been conducted and to confirm the year of that review
 - it was otherwise content to disclose a number of newspaper cuttings and press releases falling within the scope of the Applicant's request.
13. In the circumstances, given the matters requiring consideration in his decision notice, the Commissioner did not recommend that the Authority disclose this information to the Applicant at that stage. He informed the Authority that he considered it appropriate to instead require disclosure of this information as part of his decision notice. The Authority confirmed that it was content with the Commissioner's approach.

Section 34(1)(b) - Investigations by Scottish public authorities and proceedings arising out of such investigations

14. At the time of responding to the Applicant's request, the Authority withheld all of the information falling within parts 2, 3 and 4 of the request under the exemption in section 34(1)(b) of FOISA.
15. The exemption in section 34(1)(b) of FOISA provides that information is exempt from disclosure if it has at any time been held by a Scottish public authority for the purposes of an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted.
16. The exemptions in section 34 of FOISA are described as "class-based" exemptions. This means that if information falls within the description set out in the exemption, the Commissioner is obliged to accept it as exempt. There is no harm test: the Commissioner is not required or permitted to consider whether disclosure would, or would be likely to, prejudice substantially an interest or activity, or otherwise to consider the effect of disclosure in determining whether the exemption applies. The exemptions are, however, subject to the public interest test contained in section 2(1)(b) of FOISA.

The Applicant's submissions on section 34(1)(b)

17. The Applicant considered that the Authority had applied the exemption in section 34(1)(b) in a "blanket" fashion and submitted that some of the withheld information might reasonably have been disclosed (for example, via redacted summary) without posing a "genuine threat to law enforcement".

The Authority's submissions on section 34(1)(b)

18. The Authority submitted that the case files were held in their entirety for the purposes of an investigation into the specified murder, which may lead to the Authority submitting a report to the Crown Office and Procurator Fiscal Service (COPFS) to enable COPFS to determine whether criminal proceedings should be instituted.

The Commissioner's view on section 34(1)(b)

19. The Commissioner has carefully considered the nature and context of the Applicant's request, the inventory of information provided by the Authority and the submissions from both parties.

20. Having done so, the Commissioner is satisfied that the information withheld from the Applicant is clearly held by the Authority for the purposes of an investigation covered by section 34(1)(b) of FOISA (i.e. an investigation into the unresolved homicide in question).
21. As stated above, the Authority changed position during the investigation and informed the Commissioner that it was content to disclose some of the information to the Applicant.
22. However, the Commissioner would note that this information was originally held as part of a murder investigation case file and section 34(1)(b) of FOISA provides that such information is exempt from disclosure if held at any time by an authority for “the purposes of an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted”.
23. Consequently, notwithstanding the Authority’s change of position during the investigation in respect of some of the withheld information, the Commissioner concludes that the Authority was entitled to rely on the exemption in section 34(1)(b) of FOISA to withhold all of the information falling within the scope of the Applicant’s request.
24. Having accepted that the information withheld under section 34(1)(b) of FOISA was properly exempted from disclosure, the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing that information is outweighed by the public interest in maintaining the exemption.

The public interest test – section 34(1)(b)

25. As noted above, the exemption in section 34(1)(b) is subject to the public interest test in section 2(1)(b) of FOISA. Where this exemption is correctly applied, the Commissioner must consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
26. The “public interest” is not defined in FOISA but has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. The public interest does not mean “of interest to the public” but “in the interest of the public”, i.e. disclosure must serve the interests of the public.

The Applicant’s submissions

27. The Applicant considered that the public interest favoured disclosure of the withheld information on the basis that this information related to, and would bring fresh public attention to, a murder which had remained unresolved for over four decades.
28. The Applicant submitted that disclosure would enhance transparency and public confidence in the Authority, given public scrutiny into investigative conduct in long-term unresolved homicide cases was “vital” for maintaining trust in the criminal justice system.
29. The Applicant also stated that he had a familial connection to the victim, which enhanced his interest in disclosure of the withheld information.

The Authority’s submissions

30. The Authority recognised that there was a public interest in better informing the public as to how unresolved murder investigations were conducted, and in contributing to public debate regarding the Authority’s handling of this enquiry specifically.

31. However, the Authority submitted that the information related to an unresolved murder investigation which was not truly historical, as it remained plausible that an accused might still be brought to justice should new information “come to light”.
32. The Authority considered that disclosure could lead to a situation where its ability to investigate serious crime was compromised as a result of individuals being less willing to engage with the process, for fear that the details would emerge publicly.
33. The Authority submitted that disclosure would “undoubtedly” bring unwanted attention to those involved as witnesses, who would have made statements with an expectation of confidentiality. Furthermore, it argued that bereaved families might also suffer harm if sensitive or upsetting detail were disclosed publicly.
34. While the Authority noted [Decision 174/2007](#)¹ of the Commissioner and recognised that certain cases could be deemed truly historical, it argued that this was not the case here.
35. In all of the circumstances, the Authority argued that there could be no public interest in disclosing information which could jeopardise future criminal justice proceedings. However, the Authority indicated that a small amount of information may be appropriate for disclosure: in particular, that a case review had been conducted, the year of that review, a small collection of newspaper cuttings and some press releases.

The Commissioner’s view

36. The Commissioner has carefully considered the public interest arguments put forward by the Applicant and the Authority.
37. The Commissioner does not consider that the public interest favours maintaining the exemption in section 34(1)(b) of FOISA in respect of information the Authority considers appropriate for disclosure (i.e. the information described in paragraph 35 above). He therefore finds that the Authority was not entitled to withhold this information under the exemption in section 34(1)(b) of FOISA.
38. As the Authority also withheld this information under the exemptions in sections 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA at the time of responding to the Applicant’s request, the Commissioner will consider the Authority’s reliance on those exemptions to withhold this information later in his decision notice.
39. Regarding the remaining information withheld under the exemption in section 34(1)(b) of FOISA, the Commissioner acknowledges the general public interest in releasing information that may lead to an increase in accountability and scrutiny of public officials’ actions.
40. The Commissioner also recognises, given the age of the case and the length of time that has elapsed since the murder took place, that there would be a real benefit in reviewing the information held, which would provide insight into the specific murder investigation concerned and whether any relevant investigative steps had not been taken by the Authority in an attempt to solve the case.
41. Similarly, the Commissioner acknowledges the argument that disclosure of the withheld information may arguably assist with the resolution of this case. The withheld information relates to an unresolved homicide: it is possible that disclosure of information held by the

¹ <https://www.foi.scot/sites/default/files/Decision174-2007.pdf>

Authority could prompt individuals to recollect important information or realise the significance of seemingly innocuous information.

42. In short, the unresolved murder was and remains a matter of at least local, and possibly national, concern. If disclosure of this information would assist in resolving the murder, then there would be a strong public interest in disclosure.
43. However, in all of the circumstances, the Commissioner considers there to be a stronger public interest in maintaining the exemption contained in section 34(1)(b) of FOISA in relation to the withheld information.
44. The Commissioner considers that there is very considerable public interest in ensuring that the steps taken by the police to conduct a thorough investigation and the identities of the people they interviewed should be kept confidential, except where this is disclosed in the context of judicial proceedings or related processes.
45. The Commissioner believes it is unquestionably and strongly in the public interest that the public remains confident in and willing to co-operate with the criminal justice system, by providing witness statements and other assistance to police in the course of their investigations. He agrees with the Authority that disclosure under FOISA of the information requested by the Applicant would be likely to undermine the confidentiality that is an understood part of police investigations.
46. In the Commissioner's view, it is strongly in the public interest that the nature and content of evidence gathered by police is not made publicly available outwith the context of judicial proceedings or related processes, as doing so could undermine such investigations. While the murder in question took place in 1981, he accepts that, unlike the situation in Decision 174/2007, it is plausible that identified witnesses and persons of interest, as well as potential but as yet unidentified witnesses and persons of interest, are still alive.
47. On balance, therefore, the Commissioner finds that the public interest in maintaining the exemption in section 34(1)(b) of FOISA outweighs that in disclosure of the information withheld from the Applicant (with the exception of the information discussed at paragraphs 37-38 above).
48. The Commissioner therefore finds that the Authority was entitled to withhold this information under the exemption in section 34(1)(b) of FOISA. Having reached this conclusion, it is not necessary for the Commissioner to go on to consider the application of the exemptions in sections 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA in relation to that information.

Information identified for disclosure during the investigation

49. As noted above, the Authority identified some information during the investigation that it was content to disclose to the Applicant. The Commissioner has found the Authority was not entitled to withhold this information under the exemption in section 34(1)(b) of FOISA. However, the Authority had also withheld this information under the exemptions in sections 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA.
50. Given the Authority's change of position during the investigation in respect of this specific information and the fact that it is now content to disclose this information to the Applicant, the Commissioner is not satisfied that the Authority was entitled to rely on the exemptions in sections 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA to withhold this information. As the Authority has confirmed that it is content to disclose this information to the Applicant, the Commissioner has not considered the application of these exemptions in further detail.

51. The Authority has not explained why this information was justifiably exempted from disclosure when the Authority originally responded to the request, and subsequently reviewed its initial refusal, but is now considered appropriate for disclosure.
52. In the circumstances, the Commissioner finds that by failing to disclose this information to the Applicant by the date of its review outcome (at the latest), the Authority failed to comply with section 1(1) of FOISA. He requires the Authority to disclose this information to the Applicant.

Decision

The Commissioner finds that the Authority generally 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 by withholding information (other than the information it confirmed during the investigation that it was content to disclose) under the exemption in section 34(1)(b) of FOISA, the Authority complied with Part 1 of FOISA.

However, he also finds that the Authority failed to comply with Part 1 of FOISA by incorrectly relying on the exemptions in sections 34(1)(b), 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA to withhold the information it confirmed during the investigation that it was content to disclose to the Applicant.

The Commissioner therefore requires the Authority to provide the Applicant with the information it wrongly withheld by **19 October 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

2 September 2026