



Scottish Information
Commissioner
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Decision Notice 240/2026

Information relating a complaint made by the Family Practitioner Nurse against an earlier landlord.

Authority: Greater Glasgow and Clyde Health Board
Case Ref: 202300201

Summary

The Applicant asked the Authority for all information relating to the original complaint made by the Family Practitioner Nurse against an earlier landlord of his property (if such a complaint was made). The Authority informed the Applicant that it did not hold the particular information requested. The Commissioner investigated and was not satisfied (given there was no evidence of searches provided) that the Authority did not hold information falling within scope of the request. He required the Authority to carry out fresh searches and to 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 2 November 2022, the Applicant made a request for information to the Authority. He asked for all information relating to the original complaint made by the Family Practitioner Nurse against an earlier landlord of his property.

2. The Authority failed to respond to the request within the statutory timescale prescribed by section 10 of FOISA. The response was due by 30 November 2022, being 20 working days after receipt of the request on 2 November 2022.
3. On 22 December 2022, the Applicant wrote to the Authority expressing dissatisfaction with its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 31 January 2023. In its review outcome, it issued a notice under section 17(1) of FOISA, informing the Applicant that it did not hold the information requested.
5. On 14 February 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he believed it was false for the Authority to state that it had no record of the referral made.

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 14 February 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments. Following receipt of its comments the case was subsequently allocated to an investigating officer.
8. The investigating officer sought further submissions from the Authority regarding the steps it had taken to carry out searches for any recorded information held which would fulfil the Applicant's 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, although an applicant's reasons may be relevant to the investigation of what is actually held. If no relevant information is held by the authority section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. 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 must first of all consider the interpretation and scope of the request and

thereafter the quality, thoroughness and results of the searches carried out by the public authority.

13. 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 actually held by the public authority (or was, at the time it received the request).

The Applicant's comments

14. In his application to the Commissioner, the Applicant referred to the email he received from the Principal Officer, Private Sector Housing, Neighbourhoods Regeneration & Sustainability, on 13 October 2023. In this email the Principal Officer stated that: "I am also aware it was a Health Practitioner who initially made the referral to PRS HUB for support for your tenant and not your tenant herself"
15. The Applicant also referred to an email he received from the Executive Nurse Director NHS Greater Glasgow and Clyde, on 14 November 2022¹, in which the sender stated that: "I can advise that the Family Nurse was acting on behalf of the family in making the initial referral to Shelter for Housing Options advice. The Family Nurse has a copy of the initial referral and can confirm that there is no mention of the landlord, any disrepair or in fact any of the allegations that you have suggested"
16. In the same email the sender added: "The Family Nurse did not make a referral to the PRS Hub– this was unfortunately an error set out in Part 2 of the email from them, and I regret any confusion or distress that this error by the PRS Hub team has caused. I can confirm that [named individual] has contacted the PRS – Hub to raise this. It has also been confirmed by Shelter that it was in fact the Shelter Housing Officer who made the referral".
17. The Applicant, relying on the passages cited in paragraphs 14, 15 and 16, challenged the Authority's assertion that no complaint had been made by a Family Practitioner Nurse, arguing that this assertion was false.

The Authority's submissions

18. In its submissions, the Authority re-affirmed its position as set out at the time of its response to the Applicant's requirement for review, that under section 17, where a Scottish public authority does not hold information requested, it must give the applicant a notice in writing that it does not hold the information.
19. The Authority explained that, at the time of the requirement for review, it understood that the "Complaint" referred to in the request was not information held within its complaints management system. It clarified that subsequent enquiries established that the complaint in question had been made to Glasgow City Council and was held on the Council's systems.
20. The Authority commented that, given the time that had elapsed between the review and the appeal to the Commissioner, it could not confirm whether a copy of the Glasgow City Council complaint, raised by the Family Practitioner Nurse on behalf of the tenant, was held at the time at the time it responded to the request and carried out its review.
21. The Authority submitted that, had it understood the request to be seeking the Glasgow City Council complaint, and had it held a copy of that information at the relevant time, it would not

have disclosed the information. It contended that, in those circumstances, it would have been entitled to issue a refusal notice under section 18(1) of FOISA, neither confirming nor denying whether the information was held.

22. The Authority explained that section 18(1) permits a Scottish public authority to refuse to confirm or deny whether information is held where, if the information existed and were held, it would be exempt from disclosure under one of the exemptions specified in that provision. It submitted that section 38(1)(b) of FOISA would have applied (if the information was held) as the information would constitute personal data and its disclosure would contravene the data protection principles.

The Commissioner's view

23. In determining whether a Scottish public authority holds the information requested in any given case, the Commissioner must be satisfied that the authority has carried out adequate and proportionate searches, considering the terms of the request.
24. 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.
25. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it holds no recorded information in response to the request. In this case, the Commissioner is not satisfied that the Authority has achieved this.
26. Where an authority has told an applicant that it does not hold particular information, evidence of the authority's searches will usually be a key consideration during the Commissioner's investigation. As a minimum, authorities should be able to provide the Commissioner with the following information:
 - (i) details of the records or locations which were searched.
 - (ii) why these were the relevant records and locations.
 - (iii) the keywords used.
 - (iv) which staff were involved and why they were considered relevant.
 - (v) the outcome of the searches.
 - (vi) evidence that the searches have been carried out, including the outcome of the searches.
27. The Commissioner acknowledges the Applicant's view that he provided copy of email evidence suggesting that the Authority held the information requested. The Commissioner has been provided with full copies of these emails.
28. He also notes that the Authority accepted the facts in these emails.
29. The Commissioner notes that the Authority has moved from its original position, namely that the information was not held for the purposes of section 17(1), to a position where it could no longer determine whether the information had been held at the relevant time and, if it had been held, it considered that the information would have been exempt from disclosure under

FOISA. This change in position has been taken into account when assessing whether the Authority complied with Part 1 of FOISA in responding to the request.

30. The Commissioner has considered the Authority's submissions on the searches. He notes that the Authority has not provided any sort of evidence of its searches. In particular, the Authority has not provided him with any screenshots evidencing searches that were carried out, or details of the search terms used, or information about which locations were searched either at the time of receipt of the request or at review.
31. The Commissioner cannot find (on the evidence which was submitted to him) that the Authority was entitled to give the Applicant notice, under section 17(1) of FOISA that it did not hold the information requested.
32. The Commissioner therefore requires the Authority to carry out adequate and proportionate searches for information falling within scope of the Applicant's request and to provide the Applicant with a revised review outcome, based on the outcome of those searches. He also requires the Authority to retain evidence of the searches carried out. If in any doubt as to the proper interpretation of the request, it should seek to clarify this with the Applicant as a priority.

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 Authority has failed to satisfy the Commissioner that it does not hold the information requested. As a result, he finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out adequate and proportionate searches, to retain evidence of these searches, and to provide the Applicant with a revised review outcome in the light of the searches, by **2 November 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

18 September 2026