Scottish Information Commissioner
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Decision Notice 248/2026

Information regarding a specified investigation

Authority: Fife Health Board
Case Ref: 202600338

Summary

The Applicant asked the Authority for information about a specified investigation. The Authority informed the Applicant that it did not hold some of the information requested and that it was withholding other information on the basis that disclosure would be likely to prejudice substantially the free and frank exchange of views. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to evidence that it had identified all of the information falling within the scope of the request. He required the Authority to reconsider the request, carry out adequate and proportionate searches and issue a revised review outcome.

Background

1. On 4 August 2025, the Applicant made a request for information to the Authority. She asked for:

   - "A summary of the outcome of [the Authority's] internal investigation into concerns raised in December 2023 about Extended Hours service delivery at [a specified medical practice].
   - Any recommendations issued by [the Authority's] internal investigation panel in response to those concerns.
   - Any written communications or reports confirming how the investigation concluded and what actions (if any) were taken as a result."

2. The Applicant clarified that she was "not requesting personal data or operational investigative methods – only the conclusions of the investigation and associated recommendations".

3. The Authority responded on 25 November 2025. It withheld the information requested under the exemption in section 35(1)(g) of FOISA.

4. On 26 November 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 the exemption in section 35(1)(g) of FOISA applied and that, in any event, the public interest favoured disclosure. She also expressed concern about the completeness of the Authority's searches.

5. The Authority did not respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA.

6. The Applicant wrote the Commissioner on 13 January 2026, stating that he was dissatisfied with the Authority's failure to respond to her requirement for review and applying for a decision in terms of section 47(1) of FOISA.

7. On 30 January 2026, the Authority notified the Applicant of the outcome of its review. It withdrew its reliance on the exemption in section 35(1)(g) of FOISA and advised the Applicant that it:

   - investigated the concerns raised in December 2023 and concluded that there was no evidence to support a formal investigation
   - received an adequate level of assurance during its investigation and therefore did not issue any recommendations.
   - did not hold any investigative reports as these were undertaken and issued by Practitioner Services, a separate entity from the Authority
   - was withholding the written communications confirming how the investigation concluded and what actions (if any) were taken under the exemption in section 30(b)(ii).

8. On 23 February 2026, the Applicant again wrote to the Commissioner applying for a decision in terms of section 47(1) of FOISA. Shet stated she was dissatisfied with the outcome of the Authority's review because she:

   - did not accept that the Authority did not hold the investigative reports for the purposes of FOISA
   - did not agree that the exemption in section 30(b)(ii) FOISA applied to the information withheld by the Authority
   - considered that the Authority held further information falling within the scope of her request.

9. On 6 March 2026, the Applicant withdrew her application to the Commissioner dated 13 January 2026 for a decision in terms of section 47(1) of FOISA regarding the Authority's failure to respond to her requirement for review.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

11. On 9 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.

12. 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 the searches carried out and the applicability of the exemption claimed.

13. The Authority provided comments.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

15. 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 public 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.

16. 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. This is not necessarily to be equated with information that an applicant believes the public authority should hold.

17. 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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

18. In considering whether a Scottish public authority holds the requested information in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.

19. 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.

20. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).

21. In this case, the Applicant believed that the Authority held further information falling within the scope of her request.

22. During the investigation, the Authority provided helpful submissions confirming that it had identified that it had not requested searches from its Counter Fraud Liaison officer and that further information may be held by its Whistleblowing officer.

23. Considering the above, the Commissioner cannot be satisfied that the Authority has identified all information falling within the scope of the request. He requires the Authority to reconsider the request, carry out adequate, proportionate searches, reach a decision on the

basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA).

24. In carrying out the fresh searches required above, the Authority should not exclude information from consideration solely because it was created or issued by Practitioner Services. The Authority must consider all information held by it for the purposes of FOISA, as defined in section 3(2), including information received from other organisations or held by other persons on its behalf.

25. Given his finding that he cannot be satisfied that the Authority has identified all information falling within the scope of the request, the Commissioner has not reached a conclusion on the information that the Authority withheld under the exemption in section 30(b)(ii) of FOISA. Should the Applicant be dissatisfied with the Authority's revised review outcome (including any information withheld under an exemption in FOISA), she has the right to appeal the revised review outcome to the Commissioner.

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 any further information falling within the scope of the request in addition to that already identified. As a result, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to reconsider the request, carry out adequate, proportionate searches reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **6 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.

Cal Richardson
Deputy Head of Enforcement

22 September 2026