Scottish Information Commissioner
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Decision Notice 252/2026

Operation Branchform – failure to respond

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202601487

Summary

The Applicant asked the Authority for information regarding the investigation timeline and the decision-making process concerning Nicola Sturgeon within the context of Operation Branchform. This decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. On 23 June 2026, the Applicant made an information request to the Authority.
2. The Authority responded to the information request on 13 July 2026.
3. On 14 July 2026, the Applicant wrote to the Authority requiring a review of its decision.
4. On the same day, the Authority issued an acknowledgement, but it did not respond to the requirement for review.
5. On 17 August 2026, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 4 September 2026.

8. The Authority subsequently responded to the Applicant's requirement for review on 8 September 2026 and apologised for the delay in responding.

9. On the same day, the Applicant confirmed that they wanted to continue with their application for a decision by the Commissioner.

10. The Commissioner received submissions from the Authority on 14 September 2026. These submissions are considered below.

11. The Authority acknowledged that it had failed to meet the statutory deadline under FOISA for responding the Applicant's requirement for review. It apologised for this failure and explained that, in general terms, it had been an exceptionally busy year and that this increase in demand had affected both the core FOI team but also the business areas it relied on for information.

12. The Authority further noted that it had received a significant volume of requests on the subject of Operation Branchform, which had increased pressure on its colleagues in that team who were balancing an ever-increasing FOI demand with operational priorities.

13. The Authority stated that it endeavoured to respond to requests as quickly as possible but that, unfortunately, it was unable to meet the statutory deadlines in some cases and that this was one such example.

14. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.

15. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

16. As noted above, the Authority responded to the Applicant's requirement for review on 8 September 2026, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

17. The Commissioner would remind Scottish public authorities that 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]) expects them to be adequately resourced to support and deliver their FOI duties (paragraph 1.1.4 in Part 2).

[1] https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2026/03/foi-eir-section-60-code-practice/documents/foi-eir-section-60-code-practice/foi-eir-section-60-code-practice/govscot%3Adocument/foi-eir-section-60-code-practice.pdf

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

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.

Jennifer Ross
Deputy Head of Enforcement

02 October 2026