Scottish Information Commissioner
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Decision Notice 263/2026

Outcome of a specified investigation

Authority: Common Services Agency for the Scottish Health Service
Case Ref: 202502203

Summary

The Applicant asked the Authority for a summary of the outcome of a specified investigation. The Authority provided a summary to the Applicant. The Commissioner investigated and found that the Authority's summary failed to address an element of the request. He required the Authority to reconsider the request and 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); 11(1), (2), (3) and (4) (Means of providing information); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 4 August 2025, the Applicant made a request to the Authority in relation to a specified investigation. Among other things, she asked for:

   "A summary of the outcome or conclusion reached by NHS Counter Fraud Services (CFS) in relation to [the specified investigation]."

2. As part of her request, the Applicant noted that she had "never been informed whether the matter was found to constitute fraud, contractual breach, or any other kind of wrongdoing or misconduct". She added that she was not seeking "operational details or investigative methodology," just the outcomes and recommendations.

3. The Authority responded on 29 August 2025. It provided a summary of the outcome and recommendations of the specified investigation. In doing so, it advised the Applicant that

there was no evidence of fraud. It did not explicitly address the Applicant's references to contractual breach or other forms of wrongdoing or misconduct.

4. On 13 October 2025, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because the Authority had failed to clearly state as part of the summary it provided whether any evidence of fraud, contractual breaches or other forms of wrongdoing or misconduct had been detected.

5. The Authority notified the Applicant of the outcome of its review on 10 November 2025, which upheld its original decision regarding the summary.

6. On 7 December 2025, 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 because the Authority had again failed to clearly state whether any evidence of fraud, contractual breaches or other forms of wrongdoing or misconduct had been detected.

Investigation

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

8. On 24 December 2025, the Authority was notified in writing that the Applicant had made a valid application.

9. The case was subsequently allocated to an investigating officer.

10. 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 summary it had provided to the Applicant.

Commissioner's analysis and findings

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

Section 11 – Means of providing information

12. 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 relevant in this case.

13. 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.

14. Under section 11(1) of FOISA, a Scottish public authority is required, so far as is reasonably practicable, to give effect to the preference(s) of a person requesting information, where they express a preference for receiving information by one or more of three specified means in section 11(2). These means are:

(a) a copy of the information, in permanent form or another form acceptable to the applicant;

(b) a digest or summary of the information and;

(c) a reasonable opportunity to inspect a record containing the information.

15. Section 11(3) of FOISA states that, in determining whether it is reasonably practicable to provide information in the specified format, the authority may have regard to all the circumstances, including cost. Where the authority determines that it is not reasonably practicable to give effect to the preference, it must explain why.

16. Where section 11(1) of FOISA does not apply, section 11(4) permits the authority to provide the information by any means which are reasonable in the circumstances.

17. In this case, the Applicant requested a summary of the information. Having received a summary from the Authority, the Applicant expressed dissatisfaction that the summary did not contain some specific information she hoped it would contain; namely, whether non-fraud wrongdoing was detected.

18. It is apparent from the terms of both the initial response and review outcome that the Authority only clearly and specifically advised the Applicant that no fraud was detected. It separately notified the Applicant, in relation to a complaint she had made, that no criminality had been detected.

19. As stated in paragraph two above, the Applicant, as part of her request, noted that "never been informed whether the matter was found to constitute fraud, contractual breach, or any other kind of wrongdoing or misconduct".

20. The Commissioners considers that the scope of "[any] contractual breach, or any other kind of wrongdoing or misconduct" extends beyond specifically criminal wrongdoing. For example, contractual breaches, failures to pay certain taxes, and various forms of workplace misconduct are generally matters of civil, rather than criminal, law. Other forms of wrongdoing may be considered a matter of personal conscience with which the law does not generally interfere.

21. The Commissioner recognises that it is unlikely that the Authority would routinely make a finding on the latter form of non-criminal wrongdoing. However, he considers it substantially more likely that the Authority would, at least on occasion, make a finding regarding the former category of non-criminal wrongdoing.

22. In all of the circumstances and on the basis of the information provided to him, the Commissioner therefore finds that the Authority has not addressed the Applicant's expressed focus in wrongdoing that is not necessarily criminal.

23. However, the Commissioner must go on to consider whether the Authority was under any obligation to address this expressed focus.

24. The Applicant specifically asked for a summary: clearly, a summary, by definition, must omit some information. As section 11 of FOISA requires public authorities to both determine whether a summary is reasonable and prepare the summary where reasonable to do so, the Commissioner considers it clear that, when a summary is requested, public authorities must have significant discretion to determine what information should be omitted or glossed.

25. However, this discretion is not unlimited: the summary or digest must, in terms of section 1(1) of FOISA, still be a summary or digest of the information requested. Additionally, as discussed in Decision 048/2021[1], the Commissioner considers that the apparent focus and expectations of the requester, as expressed in the context of their request, are relevant to the proper interpretation of section 11 of FOISA.

26. The Commissioner therefore considers that, in exercising discretion as to what information to exclude or gloss in the preparation of a summary or digest under section 11 of FOISA, public authorities should ensure that the resultant summary remains accurate and is targeted at the apparent focus and reasonable expectations of the requester, as expressed in the context of their request.

27. In this case, there is no suggestion that the Authority's response is inaccurate. However, the Commissioner is not satisfied that it was targeted at, or sufficiently considered, the Applicant's clearly expressed focus in her request in non-criminal wrongdoing.

28. The Commissioner therefore requires the Authority to reconsider the Applicant's request for a summary of the specified investigation, with specific attention to be paid to whether investigation detected any non-criminal wrongdoing, and to issue her with a revised review outcome in terms of section 21 of FOISA.

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 failed to comply with Part 1 of FOISA (in particular, sections 1(1) and 11(2)(b)) by providing the Applicant with a summary that failed to address part of the clearly expressed focus in her request.

The Commissioner therefore requires the Authority to reconsider the Applicant's request for a summary of the specified investigation, with specific attention to be paid to whether investigation detected any non-criminal wrongdoing, and to issue her with a revised review outcome in terms of section 21 of FOISA, by **14 December 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.

[1] https://www.foi.scot/decision-0482021

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 October 2026