Scottish Information Commissioner
www.foi.scot

Decision Notice 268/2026

Respiratory and ENT “out of area” referral appointments – failure to respond

Authority: Grampian Health Board
Case Ref: 202601638

Summary

The Applicant asked the Authority for information about respiratory and ENT “out of area” referral appointments. This decision finds that the Authority failed to respond to the Applicant’s request and also his requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. On 3 July 2026, the Applicant made an information request to the Authority.
2. The Authority did not respond to the information request.
3. On 12 August 2026, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 10 September 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 30 September 2026.

8. The Commissioner received submissions from the Authority. These submissions are considered below.

9. The Authority acknowledged that it had failed to meet the statutory timescales for responding to the Applicant's request and his requirement for review which, it stated, was due to capacity issues during 2026 arising from various matters, including staff absence.

10. The Authority explained that senior colleagues were aware of the capacity issue within the team, and that additional resource for the Information Governance function had recently been approved. It also anticipated the return to work of staff on planned leave, an additional member of staff to be initially allocated to FOI compliance, and additional short-term support for internal reviews, all of which ought to improve its performance.

11. The Authority also expressed its sincere apologies for the delay, and indicated that a review response would be issued to the Applicant as soon as possible.

12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.

13. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

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. Again, 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. The Authority responded to the Applicant's requirement for review on 16 October 2026 and apologised for the delay, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

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 request for information and requirement for review within the timescales laid down by sections 10(1) and 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 in response to these failures.

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

05 November 2026