Scottish Information Commissioner
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Decision Notice 283/2026

Information regarding the death of a named person in 1944

Authority: Keeper of the Records of Scotland
Case Ref: 202301451

Summary

The Applicant asked the Authority for information about the death of a named individual. The Authority provided some information and withheld some other information on the basis that it was third party personal data or was otherwise accessible. The Applicant believed the Authority held further information which had not been disclosed. During the investigation, the Authority identified some further information which it disclosed to the Applicant. Following an investigation, the Commissioner was satisfied that, by the end of the investigation, the Authority had identified all relevant information held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002[1] (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 29 August 2023, the Applicant made a request for information to the Authority about the death of a named relative who was believed to have been in Greenock Prison around late April/early May in 1944. The Applicant stated that he could not confirm the exact date the individual was in prison but confirmed that he died in Larkfield Hospital on 13 May 1944.

[1] https://www.legislation.gov.uk/asp/2002/13/contents

2. The Authority responded on 9 October 2023, providing the information it held which, it explained, had been transferred to the Authority by the Scottish Courts and Tribunals Service (SCTS) and the Scottish Prison Service (SPS), who remained the data controllers and who made all decisions on access. These bodies, the Authority explained, had carried out a sensitivity review of the information held and had agreed it could be disclosed. The Authority further explained that it had provided the information to the Applicant in the form of a transcription as it also contained the personal data of other third party individuals, which was withheld under section 38(1)(b) (Personal information) of FOISA, on the basis that disclosure would breach data protection legislation.

3. On 10 October 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he believed there was further information held which had not been disclosed to him, for example, information about how the named individual had gone from being sentenced to 40 days in prison to dying suddenly within a matter of weeks. The Applicant also asked the Authority for information on the named individual's cause of death.

4. The Authority notified the Applicant of the outcome of its review on 8 November 2023, upholding its original decision with modification. For the information already disclosed, the Authority confirmed that this was the only information held in court books and prison registers for Greenock Prison relating to the named individual. For information on the cause of death, the Authority stated that the only source of information was the statutory death register, access to which was available via the Scotland's People[2] website, guidance[3] on which was also publicly available. The Authority explained that, as the record was available for consultation from the statutory death register, it was exempt from disclosure in terms of section 25(1) (Information otherwise accessible) of FOISA.

5. On 19 November 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he believed the Authority held further information than had been disclosed to him.

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 12 January 2024, 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.

8. The Authority provided its initial comments on 7 February 2024 and the case was subsequently allocated to an investigating officer.

9. Following consideration of the Authority's initial comments, the Investigating Officer sought further submissions from the Authority. These focused on the searches carried out by the Authority to identify the information requested.

[2] https://www.scotlandspeople.gov.uk/about-us

[3] https://www.scotlandspeople.gov.uk/guides/statutory-registers

10. The Authority provided the further submissions requested and, during the investigation, it identified some further relevant information which it disclosed to the Applicant on 4 August 2026.

11. Following the Authority's disclosure of the further information, the Applicant provided some additional information regarding the circumstances surrounding the death of the named individual, maintaining that further information must be held.

12. In light of this further information, the Authority carried out additional searches which resulted in the identification of some further information, which it disclosed to the Applicant on 8 September 2026.

Commissioner's analysis and findings

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

Whether the Authority held any further information

14. In its initial submissions to the Commissioner, the Authority believed it had either given the Applicant, or had explained to him how he could otherwise access, all of the information he had requested.

15. The Authority explained that it held the Scottish national archives, which included prison records transferred by the SPS and court records transferred by the SCTS.

16. The Authority stated that it had carried out a search of the catalogue to the archives to identify relevant Greenock Prison records and court records (the catalogue being the principal finding aid to the records held in the national archives, which contained entries for all open and closed records).

17. These searches, the Authority submitted, identified the information which had been disclosed to the Applicant with its initial response. (The Authority explained that, as the SPS and the SCTS were the owners and data controllers of the information identified, these bodies were asked to carry out a sensitivity review of the information identified, and they had agreed that the information could be disclosed.)

18. For information relating to the named individual's cause of death, the Authority explained that this would be recorded in the statutory registers, and that it had provided the Applicant with information on how to access that information online. Given this information could be reasonably be obtained by these means, the Authority considered that it was exempt from disclosure under section 25(1) of FOISA.

19. In its supplementary submissions to the Commissioner, the Authority provided further details and evidence of the searches carried out to identify the information requested:

    - The Authority carried out a search of its archive catalogue (Calm) which contained descriptions of the historical records held, and which was the primary means of carrying out searches for information requested under FOI. These descriptions were usually sufficient to identify whether a record was relevant to a request. For potentially relevant catalogue entries identified, the physical record to which the catalogue entry related would be consulted to determine whether it held any relevant information.

- Searches of Calm were carried out using the search terms “Greenock Prison”, “1944” and “[name of individual]”. Having considered the catalogue entries identified from these searches, the Authority eliminated those which clearly did not relate to the focus of the Applicant’s request.

- Manual searches of the Greenock Prison Register of Prisoners, the Governor’s journal, the relevant Criminal and Quasi-Criminal Roll Book for Greenock Sheriff Court and the Greenock Sheriff Court ‘B’ Register identified relevant information relating to the named individual.

- For information relating to the cause of death, a search of the indexes to the statutory Register of Deaths was carried out, which indicated that a relevant register entry was held, and also a related entry in the Register of Corrected Entries (RCE). Having checked both entries, both listed the cause of death, with the RCE containing some further relevant information. As this information was otherwise accessible, the Authority considered it to be exempt from disclosure under section 25(1) of FOISA.

- No searches of email correspondence or any other type of enquiry with colleagues were considered necessary, as the relevant information would be held only in the Authority’s records, accessible using catalogues and indexes.

20. The Authority considered that the searches parameters used for the searches of the Calm catalogue and the registration indexes would have identified records focused on the named individual, his death and the circumstances in which he died. Using the information in those records, together with knowledge of the content of the archive, to search for other records that may have held further relevant information, the Authority was satisfied that these methods would have identified any information held relevant to the request.

21. The Authority confirmed that, having undertaken these searches, it was satisfied that it held no further relevant information.

22. The Authority acknowledged that other records relating to the named individual’s imprisonment and his transfer to hospital might have been created by Greenock Prison. However, if this had been the case, these records had not survived to be transferred to the Authority for archiving purposes. The Authority confirmed that its searches had identified all Greenock Prison records held covering 1944.

23. The Authority also recognised that information about a person’s health may be held in patient records created by a general practitioner or by a hospital. It explained that patient records and records of NHS boards and hospitals transferred into state ownership on the creation of the NHS in 1948, but these records were not transferred to the Authority for archiving purposes. Instead, health boards make their own arrangements for archiving their records of historical value. Medical records or records created by Larkfield Hospital, if they had survived, might contain information relevant to the Applicant’s request which, the Authority suggested, might be held by NHS Greater Glasgow and Clyde Archives or possibly by Inverclyde Archives.

24. The Authority further submitted that records relating to the named individual’s death might also have been created by the Procurator Fiscal’s office in Greenock. It explained that the Crown Office and Procurator Fiscal Service (COPFS) transferred its records of historical value to the Authority, but these did not include death investigation records. The Authority believed that COPFS continued to hold a series of “Procedure books on sudden deaths” which contained brief information relating to deaths reported to COPFS, and that series did

cover 1944 but, as those records were not held by the Authority, it was unable to carry out searches of those records.

25. Having examined the explanation and evidence of searches provided by the Authority together with the information already disclosed to the Applicant, the Commissioner identified that it had not provided the Applicant with the relevant information contained in the Greenock Sheriff Court 'B' Register, nor with any information regarding the other Scottish public authorities (mentioned in the Authority's submissions) that might hold other relevant information.

26. The Commissioner asked the Authority to disclose to the Applicant the relevant information contained in the Greenock Sheriff Court 'B' register, along with advice regarding those other Scottish public authorities which might hold other relevant information, with a view to enabling him to submit an information request to those bodies for any such information held. The Authority duly did this on 4 August 2026.

27. Following receipt of this further information and advice from the Authority, the Applicant provided the Commissioner with additional information regarding the circumstances surrounding the death of the named individual, which he had not previously disclosed.

28. In light of this new information, the Authority was asked to conduct, and duly carried out, further searches (based on that information) of Greenock Sheriff Court process papers for the case in question (underlying petition and medical statements submitted), COPFS precognition files for the named individual, and Prison Governor journals and staff transfer logs.

29. Having done so, the Authority confirmed that there were no surviving process papers for the court case in question and that it did not hold death investigation records generated by COPFS. A further search of the Greenock Prison Governor's journal identified one additional entry relating to the named individual's death which, the SPS agreed, could be disclosed; however, the journal contained no information relating to staff members leaving the prison. A check of the Prisons Staff Book covering 1939 to 1946 identified no staff transfer linked to an incident involving the named individual.

30. As rehearsed above, the Authority provided the Applicant with the additional information from the Greenock Prison Governor's journal on 8 September 2026.

The Commissioner's view

31. The Commissioner has fully considered the submissions from both parties. He recognises that the Applicant has submitted valid arguments to support his belief about what information the Authority should hold. However, he can only comment on what information is actually held.

32. It is clear to the Commissioner, from examination of the further searches carried out by the Authority during the investigation which resulted in the identification of additional information, that it held more information falling within the scope of the request than was originally identified. While he notes that some of this additional information was only identified as a result of the further focused searches carried out by the Authority, in light of the new information now provided by the Applicant, he is disappointed to note that this additional information was not identified and disclosed until during his investigation. In his view, this information ought to have been identified at review stage, at the latest.

33. The Commissioner is satisfied, however, from the explanations provided by the Authority regarding the extent of the information held, that the searches carried out were, by the conclusion of his investigation, capable of identifying all relevant information held by the Authority and falling within the scope of the Applicant's request.

34. As noted above, the Authority identified and located additional in-scope information during the investigation, which it disclosed to the Applicant. This was information which ought to have been disclosed to the Applicant at the time the Authority dealt with his information request (and by review stage at the latest). The Commissioner therefore finds that, in failing to do so, the Authority failed to comply with section 1(1) of FOISA.

Section 15(1) – Duty to provide advice and assistance

35. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice and assistance in a particular case) it conforms with 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[4]).

36. The Section 60 Code states, at paragraph 5.1.1 in Part 2:

> "Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded."

37. It further states, in section 9.2 in Part 2:

> **"Duty to advise and assist when responding to a request**
>
> The obligation to provide advice and assistance continues at the point of issuing a response. For example, if directing the applicant to a website, the authority should take all reasonable steps to direct the applicant to the relevant section."

38. Having considered the Authority's submissions (in paragraphs 23-24) regarding those other Scottish public authorities which might hold other information relating to the Applicant's request, the Commissioner is concerned to note that the Authority did not relay this information to the Applicant when it handled his information request. Indeed, it appears to the Commissioner that these details only came to light as a result of questions posed by the Investigating Officer during his investigation. In the Commissioner's view, the Authority had a duty to provide this information to the Applicant when it dealt with his information request, thereby advising and assisting him in being able to make further information requests to those bodies that might hold further relevant information.

39. By failing to do so, the Commissioner concludes that, at the time it dealt with the Applicant's information request and request for review, the Authority failed to comply with its duty under section 15(1) of FOISA to provide advice and assistance to the Applicant.

40. The Commissioner notes, however, that the Authority provided this advice to the Applicant during the investigation.

[4] https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/

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.

The Commissioner finds that, by failing to identify all of the information falling within the scope of the request until after his investigation had started, the Authority failed to comply with section 1(1) of FOISA.

The Commissioner also finds that the Authority failed in its duty to provide advice and assistance to the Applicant, by failing to advise him of other Scottish public authorities that might hold relevant information, with a view to enabling to make an information request to those authorities and, in that respect, it failed to comply with section 15(1) of FOISA.

However, the Commissioner is satisfied that, by the end of his investigation, the Authority had identified all of the information falling within the scope of the request.

Given that the Authority has disclosed to the Applicant all of the additional information identified during the investigation, together with advice regarding those other Scottish public authorities that might hold relevant information, the Commissioner does not require the Authority to take any action in response to these failures, in response to the Applicant's application.

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.

Euan McCulloch
Head of Enforcement

19 November 2026