



Scottish Information  
Commissioner  
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# Decision Notice 277/2024

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## Serious Case Review

Authority: Social Care and Social Work Improvement Scotland  
Case Ref: 202200622

### Summary

The Applicant asked the Authority for a copy of the Serious Case Review that was carried out following the death of Liam Aitchison in Stornoway in 2011. The Authority stated that it did not hold the information requested for the purposes of FOISA. The Commissioner investigated and found that the information was held by the Authority for the purposes of FOISA. He required the Authority to provide the Applicant with a revised review outcome.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 3(2) (Scottish public authorities); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 25 April 2022, the Applicant made a request for information to the Authority. They requested a copy of the Serious Case Review which was carried out following the death of Liam Aitchison in Stornoway in 2011. Later that day, they clarified that they understood the review was completed a few years after 2011.
2. The Authority responded on 28 April 2022. The Authority issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

3. On 29 April 2022, following some intervening correspondence, the Applicant wrote to the Authority requesting a review of its decision: they did not believe that the Authority did not hold the information requested, because the report in question was completed after 2012 (meaning that the Authority should hold a copy).
4. The Authority notified the Applicant of the outcome of its review on 27 May 2022. Following a further search of its records, the Authority located a hard copy of the information requested. However, the Authority stated that it wished to rely on section 3(2)(a)(i) of FOISA, along with section 17(1), for the following reasons:
  - the report belonged to a different data controller (the Western Isles Child Protection Committee), which had commissioned the report – the report was not the property of the Authority
  - the Authority had no authority to delete or amend the report without the owner's consent
  - the report was considered confidential, and access was restricted to key staff within the Authority.
5. The Authority suggested to the Applicant, as it had in its initial response, that, to obtain the report, they should contact the data controller who had commissioned it.
6. On 30 May 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review: they disagreed that the Authority did not hold the information requested for the purposes of FOISA as it had confirmed to them that it had a copy of the report in question in its possession. The Applicant also provided reasons why they considered disclosure of the information requested was in the public interest.

## **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 9 August 2022, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, and the case was subsequently allocated to an investigating officer.
9. 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 relating to why it did not consider it held the information requested for the purposes of FOISA.

## **Commissioner's analysis and findings**

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

### ***Section 17(1) – Notice that information is not held***

11. 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 an authority to withhold information or charge a fee for it.
12. The information to be given is that held by the authority at the time the request is received, (section 1(4) of FOISA). Section 3(2) of FOISA defines the circumstances in which information is considered to be held by a Scottish public authority.
13. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
14. During the investigation, the Authority confirmed that it considered its position in its initial response (where it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested) was correct. The Authority stated it had applied section 3(2)(a)(i) of FOISA along with section 17(1) of FOISA in error in its review outcome and that it did not hold the information requested on behalf of the Western Isles Child Protection Committee.

#### ***The Applicant's submissions***

15. The Applicant disagreed that the Authority did not hold the information requested for the purposes of FOISA as it had confirmed to them that it had a copy of the report in question in its possession.

#### ***The Authority submissions***

16. The Authority submitted that, prior to 2016, a senior member of staff (now retired) was handed the report (titled an "Internal Significant Case Review") in the margins of a meeting. The staff member suggested that the report be kept with the Information Governance team for safe handling (which subsequently kept the report locked in a safe accessible only by the Information Governance team).
17. The Authority considered it therefore received the report outside of its normal processes. On reflection, the Authority confirmed that it should have challenged the original recipient on why they wanted to retain the document, what processes it supported and what their lawful basis was for retaining it. The Authority stated that it did not believe it should have retained the report, that it was retained in error and that it should have been destroyed.
18. The Authority explained that, since 2017, it has acted as a central collation point for all Serious Case Reviews carried out by the Child Protection Committees in Scotland. However, the Authority submitted that it did not hold the report for this purpose.
19. The Authority noted that the Scottish Government had asked it to carry out a review of Significant Case Review reports completed between 1 April 2012 and 31 March 2015. As part of this task, Child Protection Committees were asked to provide the Authority with a copy of all Significant Case Review reports that had been completed between 1 April 2012 and 31 March 2015. However, the Authority considered the report in question was not submitted to it for this purpose.
20. The Authority argued that it did not hold the report for the purposes of FOISA for the following reasons:

- it was not received by it through the agreed channels for the purpose of its regulatory work as defined under national guidance
- it had no legal basis to retain the report, which was owned by the Western Isles Child Protection Committee
- the report itself is clear that requests under FOISA relating to the report will be coordinated through the Chair of Western Isles Child Protection Committee
- it had no role of function in relation to significant case reviews at the time the report was compiled
- there was no requirement for the report to be provided to the Authority.

21. In conclusion, the Authority considered that it did not hold the report for the purposes of FOISA and that, as rehearsed earlier, it still wished to rely on section 17(1) of FOISA. The Authority indicated that, following the conclusion of the Commissioner's investigation, it intended to destroy the report as it was now only being retained for that purpose.

#### *The Commissioner's view*

22. The critical question for the Commissioner to consider is whether the information requested, which the Authority has confirmed it possesses, is held by the Authority for the purposes of FOISA.
23. Whatever the reasons for the information requested coming into the Authority's possession, it was not simply random or accidental – it was received by an employee of the Authority in the course of their employment and subsequently retained for reasons that the Commissioner must conclude had more to do with that employment than with any personal or other interest.
24. The Commissioner recognises that the Authority has stated that it does not require the information requested as it does not support its current regulatory functions, that it has no lawful purpose to retain the information and that the information should have been destroyed.
25. However, the Commissioner does not consider he would be justified in finding the information requested was not held for the purposes of FOISA, simply because the Authority should not have taken the information into its possession or should have destroyed it prior to receiving the Applicant's request.
26. In summary, the information requested appears to have been received and retained on the basis that it was relevant to the Authority and its functions, even if that belief was mistaken, and the Commissioner does not consider that the Authority's failure to act on that error is sufficient to remove such connection as exists between the information requested and the Authority. Consequently, the Commissioner concludes that the information requested is (and was, on receipt of the request) held by the Authority for the purposes of FOISA.
27. The Commissioner therefore requires the Authority to carry out a further review and respond to the Applicant afresh. However, this does not mean that the information will be disclosed. The right to information in section 1(1) is not absolute and is subject to the application of any relevant exemptions in Part 2 of FOISA.
28. The Commissioner notes the Authority's intention to destroy the information requested following the conclusion of this appeal. Given the prospect of the Applicant making a further application to the Commissioner on the basis of the Authority's revised review outcome, the

Authority should retain the information requested until such time any application is concluded (or the period for making an application has lapsed).

## **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, by incorrectly applying section 17(1) to their request and informing them that it did not hold the information requested.

The Commissioner therefore requires the Authority to carry out a further review and respond to the Applicant afresh, otherwise than in terms of section 17(1) of FOISA, by **10 January 2025**.

## **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.

**Euan McCulloch**  
**Head of Enforcement**

**27 November 2024**

