



Scottish Information  
Commissioner  
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# Decision Notice 026/2025

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## Legal aid records

Applicant: Anonymous  
Authority: Scottish Legal Aid Board  
Case Ref: 202401435

### Summary

The Applicant asked the Authority for information relating to legal aid fees paid by the Authority to law firms that had represented him in various actions in the Court of Session from 1980 to 1995. The Authority stated that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 19 September 2024, the Applicant made a request for information to the Authority. He enclosed a list of law firms that had represented him in various actions in the Court of Session from 1980 to 1995 and requested the sum of legal aid paid to these firms.
2. The Authority responded on 7 October 2024. It issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested and explained why.
3. On 12 October 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not agree that the Authority did not hold the information requested.

4. The Authority notified the Applicant of the outcome of its review on 18 October 2024, which fully upheld its original decision and further explained why it did not hold the information requested.
5. On 21 October 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review because he did not agree that it did not hold the information requested.

## **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 27 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
8. 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 how it established that it held no information relevant to the request.

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

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

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

10. 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 public 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 applicable in this case.
11. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
13. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) held by the public authority.

### *The Applicant's submissions*

14. The Applicant submitted that he believed the Authority did hold the information requested.
15. Specifically, the Applicant argued that the Authority was required, for reasons of accountability, to retain the information requested and state that he could not believe it did not hold that information.

### *The Authority's submissions*

16. The Authority noted that the request sought information from 1980 to 1995 (i.e. approximately 35 to 45 years ago). In terms of the period covered by the request, the Authority explained that it was only involved in the administration of legal aid between 1988 to 1995 – the prior period was under the auspices of the Law Society of Scotland
17. The Authority noted that legal aid applications in the relevant period were paper applications and accounts were paper accounts. Following processing by the Authority, all papers were then returned to the relevant solicitor with a few core documents being retained by the Authority in paper form. With the development of scanning during the early 2000s, paper account records were put on microfilm, but non-account papers (e.g. applications) were not.
18. The Authority explained that as of 2001 it would have held some of the information requested in microfiche (in the form of scans of relevant legal aid accounts) and in a database used for recording accounts information (in the form of payment dates and totals).
19. The Authority stated that in 2001 it stopped using the above database and started using a new system. It confirmed that the information requested was not transferred to the new system. It also explained that the previous database was no longer accessible and that all back-up tapes had been destroyed.
20. The Authority stated that it had retained the microfiche records mentioned above until relatively recently. Although the records were stored in boxes, they were not structured or searchable without access to the previous database that was no longer accessible, as they were stored by a unique reference number captured in that database. It also noted that it had not had any equipment capable of accessing or reading microfiche records for several years.
21. As the retention of these microfiche records served no purpose, the Authority took the decision in or around 2023 to securely destroy these records (and other old records not in use unrelated to the request). It confirmed that it had destroyed these records (prior to receiving the request) and provided evidence of this to the Commissioner.
22. The Authority also explained that it held no further record or schedule of the destruction because the work required to work out and itemise what it was destroying was massively beyond economic logic for records so old and of such little value or utility.
23. With the cessation of the previous database and the destruction of the microfiche records, the Authority confirmed that all records from prior to 2000 had been disposed of – which necessarily included the information requested, in so far as the Authority may ever have held it.
24. Notwithstanding the age of the information requested, the Authority explained that it had conducted a search of its database using relevant search terms. It provided evidence of these results to the Commissioner. It submitted that these searches returned no information relevant to the request, which it knew would be the case.

### *The Commissioner's view*

25. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request.
26. Given the nature and age of the information requested and the explanations provided by the Authority, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request.
27. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case. He accepts the Authority's explanation that in so far as it may have ever held information relevant to the request, that information had been disposed of by the Authority prior to it receiving the Applicant's request.
28. The Commissioner therefore finds that the Authority was correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

## **Decision**

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

## **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.

**Cal Richardson**  
**Deputy Head of Enforcement**

**4 February 2025**