



Scottish Information  
Commissioner  
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# Decision Notice 031/2025

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## Resourcing of Access to Work function

Authority: Chief Constable of the Police Service of Scotland  
Case Ref: 202401153

### Summary

The Applicant asked the Authority for correspondence and documents from a named employee regarding resourcing of the Access to Work function. The Authority informed the Applicant that it did not hold the information requested. The Commissioner investigated and found that, not only had the Authority failed to provide adequate submissions to justify its position, it had also failed to provide adequate advice and assistance to the Applicant.

### Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)<sup>1</sup> sections 1(1), (2), (4) and (6) (General entitlement); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 1 December 2023, the Applicant made a request for information to the Authority. She asked for all correspondence and documents from the Equality and Diversity Manager [name redacted] regarding resourcing of the Access to Work function.
2. The Authority wrote to the Applicant on 5 December 2023 asking her to clarify the timeframe that her request covered.

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2002/13/contents>

3. That same date, the Applicant replied, asking the Authority to use the timeframe of 1 April 2020 to 1 December 2023.
4. The Authority responded on 11 January 2024. It informed the Applicant that there was no Access to Work function within the Authority and, as such, in terms of section 17(1) of FOISA, it did not hold the information requested.
5. That same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because:
  - she was aware that a small team working for the Equality and Diversity Manager within People and Development dealt with Access to Work matters, and to say that no Access to Work function existed, and so the information requested was not held, was a semantic deflection not in the spirit of FOI law;
  - other than being asked to specify date ranges, she had not been offered any advice and assistance before her request was refused, and
  - the Authority's response was overdue.
6. Having received no response from the Authority to her requirement for review within 20 working days, the Applicant wrote to the Commissioner on 10 March 2024. The Applicant stated that she was dissatisfied with the Authority's failure to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA. This resulted in the issue of [Decision 076/2024](#)<sup>2</sup> by the Commissioner on 2 May 2024. In that Decision, the Commissioner found that the Authority had failed to comply with Part 1 of FOISA, by failing to respond to the Applicant's requirement for review within the 20 working day timescale set out in section 21(1) (Review by Scottish public authority) of FOISA.
7. The Authority notified the Applicant of the outcome of its review on 11 April 2024, apologising for the delay in responding and fully upholding its original decision. The Authority explained that its understanding of "Access to Work" in the context of the request, was the Government grant scheme that helped people with a disability to start or remain in employment, providing financial and practical support to help disabled people overcome the barriers they face in the workplace. Having made enquiry with its People and Development Team, it stated that there was no dedicated Access to Work function or department within the Authority, or any individual with that responsibility in their job title etc.; as such, Access to Work matters would be dealt with by various team members as and when appropriate. The Authority estimated that, for the time period stated, several thousand officers and staff would have been impacted in some way by Reasonable Adjustments/Access to Work matters. In light of all of this, the Authority was satisfied that it had correctly applied section 17 of FOISA.
8. The Authority informed the Applicant that, as it stood, and in the absence of any specific Access to Work function, her request was incredibly wide in scope and it could offer no advice and assistance other than to refine it. The Authority suggested that, if the Applicant could describe the type of information requested in more detail, perhaps with examples, it would be happy to make further enquiry.
9. The Authority explained that, in focussing her request on one individual, there were significant difficulties in seeking access to information with no further context. Further, while individuals had personal email accounts, there were also shared mailboxes, shared network

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<sup>2</sup> <https://www.foi.scot/decision-0762024>

drives and personal drives. Even if the Applicant were to provide more clarity, the Authority believed that searches for any information would remain complex due to the number of locations where information could be held, and the ambiguity of any search parameters. It also explained that it was unable to search documents based specifically on their author (due to the wide-ranging use of templates which retained their original “creator”), which made searching for documents by a named individual problematic. It asked the Applicant to bear this in mind should she decide to submit a new information request.

10. On 26 August 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority’s review because she believed that:
  - the Authority’s justification for its response (i.e. that no Access to Work function existed and that no individual had this responsibility in their job title) was illogical, potentially misleading and not in the spirit of FOI law, and this did not mean that the information requested did not exist;
  - the statement made by the Authority (i.e. relating to the several thousand employees impacted in some way) was irrelevant to her request, given she had asked for correspondence on a specific matter from a named individual in a defined timeframe, and
  - the Authority had not reverted to her to provide advice or to request further clarification to source the information she required.

## **Investigation**

11. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
12. On 1 October 2024, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
13. 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. These focused on the Authority’s justification for refusing the request on the basis that it did not hold the information requested, and on what advice and assistance the Authority had given to the Applicant.

## **Commissioner’s analysis and findings**

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

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

15. 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 applicable in this case.

16. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
17. 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. He 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) actually held by the public authority.
18. The Applicant informed the Commissioner that, at the time of her request, there were a number of individuals within the Authority's Equality and Diversity team who provided the "function" of engaging with employees, suppliers and the Department of Work and Pensions on all matters relating to Access to Work, and it was the resourcing of this function she was asking about.
19. In its submissions to the Commissioner, the Authority stated that, following receipt of the Applicant's request, it had made enquiries with its Equality and Diversity Manager and its Director of People and Development, both of whom confirmed that there was no specific Access to Work function within the Authority. As a result, no searches were carried out at initial response stage.
20. While the Authority acknowledged that the Applicant had provided additional information at review stage, it stated that it was still totally unclear about what actual information was being sought: the request remained as seeking all correspondence and documents over a three-year period regarding the "resourcing" of same.
21. The Authority acknowledged the difficulties with a section 17 ["information not held"] response which, it submitted, was not intended to obfuscate matters. Rather, it was to try to explain to the Applicant that it could only focus a search on recorded information, and that a request seeking information on a matter not recognised as a specific "function" or role was not straightforward, particularly where the terminology involved will be used extensively across all manner of records.
22. The Authority did not dispute that Access to Work matters were predominantly, but not exclusively, dealt with by a small team of individuals as part of their role within the Equality and Diversity team.
23. The Authority submitted that "resourcing" was an incredibly wide term, covering everything from strategic activity to day-to-day management, performance monitoring and issues, absence issues, leave planning etc. It explained the difficulties in carrying out meaningful searches:
  - There was no Access to Work department, nor any individual with that responsibility in their job title.
  - There was no "Resourcing of the Access to Work function" folder and no obvious central location where potentially relevant information would be held.

- Although the request focussed on information “from” a named individual, this still meant that all personal and shared email accounts, personal network drives and the People and Development shared network drive would have to be searched.
  - While searches were possible, the problem lay in what the Authority would be searching for, as the terminology was far too wide to be meaningful. Other than searching any record which mentioned “Access to Work”, “resourcing” or the named individual, records could also contain any variations of these, for example, “ATW”, “resource”, “resources”, “staff”, “staffing”, “cover”, “responsibility”, “work” etc. Searching on “Access to Work” and/or “resourcing” would return thousands of hits.
24. The Authority accepted that the section 17 “information not held” stance could not be upheld in the circumstances. It submitted that it could, instead, take a literal interpretation of the request and change its position to section 12 (Excessive cost of compliance), but recognised that this would not lead to a meaningful conclusion.

### **Section 15 (Duty to provide advice and assistance)**

25. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice or 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](#)<sup>3</sup> (the Section 60 Code).
26. The Section 60 Code states, at section 5.1 in Part 2 (under “Authorities should offer advice at all stages of a request”):
- “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.” (Paragraph 5.1.1)
27. It further states, in section 5.3 in Part 2 (under “Authorities must provide appropriate advice and assistance to enable applicants to describe clearly the information they require”):
- “...The authority must provide appropriate advice and assistance to enable an applicant to make their request in a way which will describe the information they want reasonably clearly. The authority should remember that applicants cannot reasonably be expected to always possess identifiers such as file reference numbers or the description of a particular record. Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek.” (Paragraph 5.3.1)
  - “If an authority is unclear about what information the applicant wants, it should obtain clarification by performing its duty to provide reasonable advice and assistance to the applicant. Where a request is not reasonably clear, advice and assistance could include: providing an outline of the different kinds of information which might meet the terms of the request; providing access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority; providing a general response to the request setting out options for further information

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<sup>3</sup> <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

which could be provided on request; contacting the applicant to discuss what information the applicant wants.” (Paragraph 5.3.3)

- “The aim of providing advice and assistance is to give the applicant an opportunity to discuss their application with the authority, with the aim of helping the applicant describe the information being sought reasonably clearly, so that the authority is able to identify and locate it.” (Paragraph 5.3.4).

28. In her requirement for review, the Applicant was dissatisfied that the Authority had failed to revert to her to provide advice, or to request further clarification to source the information she required.
29. The Authority was asked to explain what advice and assistance it had given the Applicant to enable the sourcing of the information she required, and what consideration it had given to suggesting, for example, a search of the Equality and Diversity Manager’s email account using relevant keyword searches.
30. In its submissions to the Commissioner, the Authority stated that it had tried to explain to the Applicant, in its review response, the difficulties with meaningful searches, and had encouraged her to rethink her request.
31. In light of these difficulties, the Authority could only suggest that the Applicant could perhaps suggest or agree an acceptable search methodology that would let the Authority reach a definitive position. It explained that colleagues in ICT had advised that they could, in theory, conduct a search for nested keywords (e.g. documents/emails containing a combination of words/phrases).
32. The Authority suggested that the Applicant could identify a list of keywords she felt would be present in materials relevant to her request (e.g. “budget”, “access to work”, “reasonable adjustment”, “centralisation” etc), and it would arrange such a search. It stated, however, that even combined in this way, the results would still likely be extensive and section 12 might apply, but it hoped that this would demonstrate the situation more clearly to the Applicant.

#### ***The Commissioner’s view on section 17(1) and section 15***

33. The Commissioner has carefully considered all relevant submissions and the terms of the request. He notes that, during the investigation, the Authority accepted that reliance on section 17(1) of FOISA in this case could not be upheld.
34. It is evident, from the submissions provided by the Authority, that it was not clear as to the information the Applicant was seeking to obtain. That being the case, the Authority had opportunity to seek further clarification from the Applicant on this. It is clear that, other than asking the Applicant to confirm the date range covering her request, the Authority did not do so, but instead chose to respond in terms of section 17(1) which, in the Commissioner’s view, was somewhat arbitrary.
35. The Commissioner notes that, during the investigation, the Authority was able to suggest appropriate keyword searches that might identify relevant information. This leads him to question why the Authority did not engage with the Applicant in this regard at any stage during the request and review process. The Authority has provided the Commissioner with no evidence that it had discussed any of this detail with the Applicant at any stage, as per the terms of the Section 60 code referred to above.

36. While the Commissioner acknowledges that, in its review outcome, the Authority explained many of the problems and barriers associated with searches, he notes that it did not offer any positive suggestions to help the Applicant reframe her request.
37. The Commissioner would stress that, in providing advice and assistance to an applicant to help them frame a request so that the authority can carry out reasonable searches to identify any relevant information, the onus is on the authority, not the applicant, to suggest ways in which this can be achieved. An authority cannot expect an applicant to have such knowledge of its records management practices to allow them to come up with search terms and locations – in the Commissioner’s view, this is entirely unrealistic and goes against the practice expectations set out in the Section 60 code.
38. In the absence of any evidence of searches for the information requested, the Commissioner has no option but to find that the Authority was not entitled to rely on section 17(1) of FOISA in this case.
39. Further, the Commissioner cannot agree that the Authority provided sufficient advice and assistance to the Applicant to help her reframe her request so that it would be able to carry out reasonable searches to identify relevant information. He finds that the Authority failed to comply with the requirements of section 15 of FOISA in that respect.
40. The Commissioner therefore requires the Authority to liaise and engage with the Applicant, and reach mutual agreement on relevant search terms and locations to be searched (both of which to be suggested by the Authority), in order that it can carry out reasonable, proportionate searches to locate any relevant information held in those locations.

## 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 satisfy the Commissioner that it does not hold the requested information. As a result, the Commissioner finds that the Authority was not entitled to respond in terms of section 17(1) (Notice that information is not held) of FOISA and, in doing so, it failed to comply with section 1(1) (General entitlement).

The Commissioner also finds that the Authority failed to comply with the duty in section 15 (Duty to provide advice and assistance) by failing to provide adequate advice and assistance to the Applicant.

The Commissioner therefore requires the Authority to liaise with the Applicant to reach mutual agreement on the search terms and locations to be searched, carry out reasonable and proportionate searches based on these, reach a decision on that basis and issue a revised review to the Applicant, with explanation (all in terms of section 21 of FOISA), by **28 March 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**

**11 February 2025**