



# Decision Notice 117/2024

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## The number of suicides that occurred during court actions

**Authority: Scottish Legal Aid Board**  
**Case Ref: 202200766**

### Summary

The Applicant requested information relating to the number of suicides that had occurred during court actions funded by the Authority. The Authority informed the Applicant it did not hold the information requested. The Commissioner investigated and found the Authority was entitled to notify the Applicant that it did not hold the information.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

### Background

1. On 31 May 2022, the Applicant made a request for information to the Authority. He asked for “totals on a year by year basis” of the number of suicides that had occurred during court actions funded by the Authority.
2. The Authority responded on 22 June 2022 stating that it did not hold the information requested.

3. On 23 June 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he believed the Authority held the information requested and asked for further searches to be carried out.
4. The Authority notified the Applicant of the outcome of its review on 6 July 2022, fully upholding its original decision. The Authority noted that, in the event a party to a case passes away, it would be “very unusual” for a solicitor to inform the Authority unless the deceased was in receipt of legal aid. Where the Authority is informed of the fact of death, it would not normally be informed of the cause of death as there is no legal requirement for it to record such information and it would not generally be required by it to perform its functions
5. On the same day, 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 considered that the Authority did 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 2 August 2022, the Authority was notified in writing that the Applicant had made a valid application and 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 determined that it did not hold the information requested.

## **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) – 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 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. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is not necessarily to be equated with information an applicant believes the authority should hold. 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.
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 expectation about what 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 authority.

#### *The Authority's submissions*

14. The Authority summarised its position as follows:
  - it has no need of cause of death, only the fact of death (and only where that fact is relevant to the ongoing administration of an application or grant of legal aid)
  - it has no need for establishing suicide as the actual cause of death, if it is suspected
  - those who provide it with information as to the fact of death, namely solicitors, do not provide it with cause of death (far less enter the issue of whether suicide is suspected or established)
  - it would be wrong for it to hold conjectural details on sensitive but unnecessary matters and there is no lawful basis for it to undertake verification processes for information that is unnecessary for it to have
  - it knows, from experience and knowledge of its information governance and information systems, that it does not record information about cause of death in general or, in particular, suicide.
15. The Authority further explained that it was not expected to hold the information requested, it did not have a duty to hold the information requested and that there is no internal or external guidance creating the expectation that it will hold the information requested.
16. Despite this, the Authority carried out searches of its systems to examine in detail applications for civil legal aid (being the form of legal aid relating to civil court actions) between October 2017 and July 2022.
17. The Authority found (and provided to the Commissioner) 10 instances where the fact of death had been reported to the Authority. However, in none of those cases was suicide recorded as the cause of death (nor was a cause of death recorded at all).
18. The Authority explained that this outcome accorded with its view that it will hold the detail of the fact of death where that has been reported to it, but not the cause of death and specifically not any indication (whether established or conjectural) of suicide as cause of death.
19. The Authority confirmed that it was therefore satisfied that it did not hold the information requested.

#### *The Applicant's submissions*

20. The Applicant explained that he believed the information requested was held by the Authority. He suggested that the Authority would be obligated to hold information relating to deaths "associated with [its] workplace".

### *The Commissioner's view*

21. Given the explanations and submissions provided, the Commissioner accepts that the Authority took adequate and proportionate steps to establish if the information was held and he is satisfied, on balance, that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
22. The Commissioner considers the Authority's submissions detailed and persuasive, and he accepts that it does not hold the information requested by the Applicant, nor would it be expected to hold it.
23. While the Applicant believes that the Authority does hold the information requested, the Commissioner is satisfied that this was not the case.
24. The Commissioner therefore concludes that the Authority was correct to give the Applicant 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 June 2024**

## **Appendix 1: Relevant statutory provisions**

### **Freedom of Information (Scotland) Act 2002**

#### **1 General entitlement**

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

#### **17 Notice that information is not held**

- (1) Where-
  - (a) a Scottish public authority receives a request which would require it either-
    - (i) to comply with section 1(1); or
    - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
  - (b) the authority does not hold that information,it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

#### **47 Application for decision by Commissioner**

- (1) A person who is dissatisfied with -
  - (a) a notice under section 21(5) or (9); or
  - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
  - (i) the request for information to which the requirement for review relates;
  - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);  
and
  - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).