



Scottish Information
Commissioner
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Decision Notice 113/2025

Communications relating to a title deed

Authority: Keeper of the Registers of Scotland
Case Ref: 202301472

Summary

The Applicant asked the Authority for communications relating to a specific plot of land and associated title deed. The Authority responded but the Applicant was not satisfied that the Authority had identified all of the information falling within the scope of his request. The Commissioner investigated and was satisfied that the Authority held no further relevant information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); and 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 2 October 2023, the Applicant wrote to the Authority and referred to a specific plot of land and associated title deed. He asked the Authority to provide him with copies of any communications regarding this subject during the date range 1 August 2018 to 2 October 2023.
2. The Authority responded on 27 October 2023 and provided the Applicant with copies of email correspondence and a record of a telephone call. The Authority also notified the Applicant that it was withholding some information under section 25(1) of FOISA, as it was already available from its public registers, and it was withholding some personal data under section 38(1)(b) of FOISA.
3. On 27 October 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority's response because he did not accept that no further communications were held. He noted that the

Authority had been processing his application for more than five years. The Applicant also challenged the Authority's reliance on section 25(1) of FOISA, arguing that he could not find the information via its public registers.

4. The Authority notified the Applicant of the outcome of its review on 22 November 2023. It submitted that it had carried out further searches, and it did not hold any additional information falling within the scope of his request. The Authority apologised for referring him to its public registers (ScotLIS) and explained that when applications (such as his) were in the process of registration, they were not routinely available to members of the public via ScotLIS but were instead available from its Property Information Team. It advised him that someone from this team would be in touch with him to provide the information free of charge. The Authority upheld its decision to withhold some information under sections 25(1) and 38(1)(b) of FOISA.
5. On 22 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 could not accept that "no further communications regarding this subject exist within ROS and that effectively, the matter has remained without further progress, comment or communication from anyone, within those 5 years." The Applicant did not challenge the Authority's reliance on the exemptions contained in section 25(1) and 38(1)(b) of FOISA.

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 31 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 was also asked to send the Commissioner the information withheld from the Applicant. No withheld information was in this case.
9. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

11. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is the information held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case.
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. 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.

The Applicant's comments

13. In his application to the Commissioner, the Applicant questioned whether the Authority had identified all relevant information falling within the scope of his request. Specifically, he stated:

The authority said it does not hold the information (or doesn't hold more information than it has already given me), but I disagree I cannot accept that no further communications regarding this subject exist within ROS...

The Authority's comments

14. In its submissions, the Authority explained that once it received the Applicant's request for information it initiated a search on its key registration business systems (Case Management System, Land Registration System, Land Register Archive, LR Archive Viewer, Back Office Production System (BOPs)) and it also contacted the following teams: Registration Practice Team, Customer Services, Property Information and RoS Secretariat.
15. The Authority submitted that key information pertaining to any title was held in the statutory Land Register Archive (applications forms, deeds, and any other information judged at the time to be crucial in informing any registration decision made) and the Land Register Business Record (other information, such as external and internal correspondence, internal notes and referrals etc.). It noted that this information was not held in a single case management system but was held across the key registration business systems outlined above. The Authority also explained that searches for requests relating to specific titles go to all teams that may have relevant information (i.e. that may have been involved in the application up to that point)
16. The Authority stated that the outcome of the above searches resulted in two items being identified as falling within the scope of the request, and it provided descriptions of these two items:
- A call log record from the Authority's customer service systems which was disclosed to the Applicant (this system contains a record that a call took place on 14/05/2021, it deletes the fuller call recording after 2 years. No further information was found regarding the outcome of this call, or any action taken because of it)
 - Email correspondence between the Applicant's solicitors and the Authority's customer services colleagues dated 17/07/2023, which was disclosed after the redaction of personal information.
17. The Authority submitted that its review outcome upheld that the initial search had been conducted appropriately, and there was no evidence to suggest that it held any further information falling within the scope of the request.
18. The Authority explained that its review outcome did find procedural information outwith the scope of the original request within its land registration system (LRS) (it was not considered

to be “copies of communications” as per the original request). The Authority noted that it provided the Applicant with this information in its review outcome, commenting that this was for reasons of completeness and full transparency.

19. The Authority provided the Commissioner with evidence of the searches it had carried out. This included email responses to the original search request, screen shots of the systems interrogated and a detailed record of all of the searches carried out by named staff members, including the search terms used, sources searched and the results of those searches.

The Commissioner’s conclusions

20. The Commissioner acknowledges the significant length of time that the Authority was “processing” the Applicant’s request to register his title deeds (five years) and he understands that the Applicant would have expected there to be significantly more correspondence regarding this process than that identified, given the time period involved. The Commissioner considers that the Applicant’s expectations in this regard are reasonable. The Applicant is understandably frustrated that the Authority took so long to process the registration of his title deeds, and he does not understand (nor has it been explained to him) why his particular case was deemed complex nor why it took so long.
21. However, while the Commissioner has sympathy for the Applicant’s situation, his legal powers are restricted to determining whether the Authority has identified all of the information falling within the scope of the Applicant’s information request. He cannot consider whether the Authority has carried out its main functions appropriately nor can he reach a view on whether certain information should be held by the Authority. In this particular case, the Commissioner can only investigate whether or not the Authority has carried out appropriate searches and whether such searches were likely to identify all relevant information falling within the scope of the Applicant’s information request.
22. As noted above, the Authority provided the Commissioner with evidence of the searches it conducted, including screen shots, email responses from officers who had conducted searches along with a detailed list of the searches that were carried out. As part of this evidence, the Authority also provided the Commissioner with a table that listed the named officers who conducted searches, the search terms they used, the sources that were searched and the outcome of those searches. The Commissioner notes that the Authority’s retention schedules required it to delete records of telephone calls after two years and that email acknowledgement notifications were deleted after 4 months.
23. Having considered all of the submissions and the terms of the request, along with the Authority’s description of its retention schedules, and evidence of the searches that were carried out, the Commissioner is satisfied that the enquiries and searches carried out by the Authority were reasonable and proportionate. He also considers that the members of staff involved in these enquiries and searches were those most likely to hold, or have knowledge of, any recorded information held by the Authority which would fall within scope of the request. On balance, the Commissioner is satisfied that the information requested by the Applicant was capable of being identified by the searches carried out by the Authority.
24. In conclusion, the Commissioner is satisfied that the Authority has provided sufficient evidence to show that it does not hold any further information falling within the scope of the Applicant’s information request.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) 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.

Jennifer Ross
Deputy Head of Enforcement

13 May 2025