



Scottish Information
Commissioner
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Decision Notice 125/2025

Repairs and maintenance at Dundee Olympia

Authority: Dundee City Council

Case Ref: 202500165

Summary

The Applicant asked the Authority for information about repairs and maintenance carried out at the Olympia leisure centre in Dundee during a specified time period. The Authority disclosed some information to the Applicant but hadn't included other information that the Applicant expected to receive. The Commissioner investigated and found that the Authority had interpreted the request too narrowly. He required the Authority to re-consider the request and issue a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 21 (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 23 April 2024, the Applicant made a request for information to the Authority. He referred to the repairs carried out at Dundee Olympia between October 2021 and December 2023, and asked for:
 - (i) A full list of individual repairs/maintenance carried out, the cost of these repairs and the contractor(s) that carried out these repairs

- (ii) A full list of snagging items requiring attention before the reopening of the Olympia in December 2024
- 2. The Authority responded on 16 December 2024 and disclosed information to the Applicant.
- 3. Later that same day, on 16 December 2024, the Applicant asked the Authority for some clarification on the information that had been disclosed. He noted that the total value of the work listed in the disclosed information was just under £300 000, which was far less than the Authority's agreed budget for the works (over £6 million). The Applicant asked if the larger repairs and maintenance were not included in the list that had been disclosed to him in relation to part (i) of his request.
- 4. On 30 December 2024, the Authority confirmed that the larger works were not included in the disclosure and that the "figures relate to maintenance works for the period".
- 5. On 03 January 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because the information provided to him (in relation to part (i) of his request) was not entirely what he had asked for. He restated that he had requested "a list of ALL repairs and maintenance work – including the larger repairs under the main £6 million contract – carried out during the period referenced".
- 6. The Authority notified the Applicant of the outcome of its review on 28 January 2025. The Authority upheld its original response and said that the information disclosed was consistent with that which was asked for. It added that any works that fell "outside those classed as Repairs and Maintenance" had not been included in the response.
- 7. On 29 January 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he had not been given all the information he asked for in part (i) of his request.

Investigation

- 8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
- 9. On 7 February 2025, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.
- 10. 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 related to its interpretation of the Applicant's request and how it identified information captured by the request.

Commissioner's analysis and findings

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

Interpretation of the request

The Applicant's comments

12. The Applicant provided context for his request. He explained that, in October 2021, the Olympia swimming pool, owned by the Authority, closed due to an urgent issue with a light fitting and it was subsequently discovered that much bigger works, totalling £6 million were required and carried out. As a result of this, the site remained closed to the public until December 2023.
13. The Applicant submitted that the work was widely publicised, with numerous news stories written. He argued that most of these stories referred to the work as “repairs” and he provided evidence to the Commissioner in the form of online search returns.
14. The Applicant argued that to any ordinary person, a reference to “the repairs” at the Olympia between October 2021 and December 2023 would be taken as meaning the entire £6 million project, including planned and more urgent works. Given this, he submitted that his request for a full list of all repairs and maintenance carried out at the Olympia between these dates was quite clear.
15. The Applicant noted that the Authority appeared to argue that because he did not reference “planned refurbishments, replacements and upgrades” in his request, he did not ask for the information that he thought he was asking for. The Applicant argued that, at no point, did the Authority seek clarification from him regarding his request but rather it worked on the assumption that he had asked for a list of work separate to the main work that was carried out; a list of work that he had no idea existed.
16. For these reasons, the Applicant submitted his belief that the Authority was being deliberately obstructive.

The Authority's comments

17. The Authority explained, given the nature of the building and the activities that occurred there, that there was a high level of refurbishment required and an inherent difficulty isolating which works were purely repairs and maintenance from those which formed part of the overall capital project of refurbishment required for this type of building.
18. The Authority explained that it understood the request to relate to repairs and maintenance works, as initially outlined by the Applicant. It argued that the £6.1 million capital project covered planned refurbishment works that went beyond repairs or maintenance.
19. The Authority submitted that “repairs and maintenance” referred to essential work required to restore or maintain functionality which, generally, addressed minor defects, safety concerns or operational needs. The Authority explained that such activities were generally reactive and, therefore, it described these as “Repairs & Maintenance Unplanned”.
20. The Authority commented that the refurbishment works were part of a larger strategy involving improvements, upgrades or modernisation that went beyond maintaining the existing infrastructure, and it submitted evidence in the form of committee reports^{1,2} which described these refurbishment works.

¹ <https://www.dundee.gov.uk/reports/reports/150-2022.pdf>

² <https://www.dundee.gov.uk/reports/reports/151-2022.pdf>

The Authority argued that, as such, these works were budgeted, approved and executed as a capital project and were considered separate from repairs and maintenance.

21. The Authority argued that it was specifically prohibited from including repairs and maintenance as capital works under finance guidelines and therefore, that formed a natural delineation between repairs or maintenance and refurbishment works under the capital project.
22. The Authority refuted the Applicant's argument that the term "repairs" was widely used in press articles on the subject by arguing that the online search results provided by the Applicant to demonstrate use of the term "repairs", were articles authored by the Applicant himself. The Authority submitted that the Applicant's subjective use of terminology should not be considered as an objective test of what are considered repairs and maintenance. It submitted that the term "repairs" was not a term that the Authority had used in relation to the refurbishment works.
23. The Authority was asked if it had considered preventative maintenance works to be within the scope of request (i). The Authority submitted that there was difficulty in isolating works into distinct categories; in this case, works which may be purely preventative and those works which may be considered reactive. The Authority gave an example from the disclosed information of works that had been carried out to address a valve leaking water on to the floor. It submitted that this repair was, in itself, reactive but such repairs prevent water damage to surround areas and slipping hazards. The Authority submitted that it had therefore kept maintenance and repairs categorised to those which are, on the face of it, reactive in nature and related to the general upkeep of the building or those works carried out under Health and Safety contracts.
24. When asked how it might have expected a member of the public, with no knowledge of how the Authority categorised works, to ask for information about works carried out under the £6 million contract, the Authority submitted that the request might have asked for a list of all works undertaken as part of the £6 million contract, or the request could have asked explicitly for details of the works referred to in the media articles, perhaps by reference to the articles arising from Applicant's online search results.
25. The Authority commented that it did not seek any clarification from the Applicant because it felt that the original request was sufficiently clear. The Authority submitted that it considered that the Applicant was focused on repairs and maintenance. It did not anticipate a request for detailed information on planned refurbishments. The Authority referred to paragraph 5.3.2 of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information \(Scotland\) Act 2002 and the Environmental Information \(Scotland\) Regulations 2004](#)³ (the "Code") and submitted that, given the status of the Applicant, it did not consider it necessary to seek clarification or to offer advice and assistance.

The Commissioner's conclusions on the Authority's interpretation

26. The Commissioner has considered the submissions of the Applicant and the Authority carefully.
27. The Commissioner notes that the online search result evidence provided by the Applicant contains the word "repairs" as one of the search terms used.

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

Therefore, the Commissioner is not surprised to find that the search results presented contain the word “repairs”. However, having carried out his own research, the Commissioner nonetheless agrees with the Applicant that there is widespread media and industry coverage of the works at the Olympia, and that most of the articles refer to the works as “repairs”.

28. The Commissioner is puzzled by the Authority’s approach to this request. It appears to be deliberately misconstruing the description of works which, to the lay person, might clearly be described as repairs and/or maintenance works. Indeed, the words “repair” and/or “maintenance” themselves feature in the committee reports presented to the Commissioner as well as others on the same subject⁴.
29. The Commissioner considers that in cases where the terminology used by a public authority differs from that used by a member of the public, it should ensure that its interpretation of the request is based on a plain English reading of the request, and if there is any doubt, it should seek clarification of the request, as it is entitled to do under section 1(6) of FOISA.
30. The Authority has argued that if the Applicant was seeking information on all of the works that were carried out at the Olympia during that time period, he should have referred to the £6 million contract. The Commissioner is not persuaded by this argument. He notes that all of the “planned refurbishment” works as well as the “reactive” work on maintenance and repairs, took place during the time period specified by the Applicant. He considers that this should have clearly indicated to the Authority that the Applicant wanted details of all of the works carried out during that timeframe, to suggest otherwise appears perverse.
31. The Commissioner also considers that the context of the request should have been clear to the Authority, particularly given the timing of the request, which was made shortly after the full reopening of the facility.
32. Overall, the Commissioner is not satisfied that the Authority has interpreted the request reasonably. For this reason, he finds that the Authority failed to comply with Part 1 of FOISA by providing the Applicant with an incomplete response. The Commissioner requires the Authority to reconsider request (i) ensuring that all works carried out under the £6 million contract are included in the scope of the searches, and to provide the Applicant with a revised review outcome.

Adequacy of searches

33. 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.
34. 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.
35. 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.

⁴ <https://www.dundee.gov.uk/reports/reports/336-2021.pdf>

36. The Authority submitted that it carried out comprehensive searches across its asset management tool (GVA and/or GVC) and general accounting records using the ledger code for repairs and maintenance and keyword “new Olympia”. The Authority argued that there were no other search terms which would be used to generate the information requested and no other systems which required to be searched. It submitted that the searches were appropriate and that no further searches were necessary given the scope of the request.
37. The Authority explained that the searches were carried out by the City Development Team Leader for Performance and Finance because they have access to both systems and a knowledge of the ledger coding system.
38. It was noted that a number of entries in the disclosed information listed under “Scope” have text which states “... Carry out following Code 1 Remedial Works at Olympia Leisure Centre”, but there appears to be no accompanying (or following) text to describe what these works are. The Authority submitted that “Code 1 Remedial Works” referred to instructions to the Authority’s health and safety contractors to undertake works to plant/machinery/systems etc. It argued that these works were input to a separate system which was not searched to clarify what these works were.
39. Notwithstanding the narrow interpretation of the request that the Authority has taken, the Commissioner is not persuaded that the searches that have been carried out were adequate. The Authority has argued that its interpretation of the request was that it only sought information about reactive repairs and maintenance, yet (in paragraph 38) the Authority appears to argue that “remedial” works do not constitute reactive repairs and therefore no searches were necessary for this information. The Commissioner is not convinced by Authority’s position.
40. Given the original narrow interpretation of the request, and the Commissioner’s earlier findings on this, the Authority is required carry out new searches in any event. However, when conducting these searches, it must ensure that its searches encompass all repairs, maintenance, remedial works and anything else that a lay person might consider to be repairs and maintenance that were carried out at the Olympia between the dates specified in request (i).

Environmental information

41. Given the wider interpretation of the request that is necessary, the Authority must be mindful that some of the information captured by request (i) may be environmental information. If this is the case, the Authority is reminded that it must consider environmental information under the provisions of the Environmental Information (Scotland) Regulations 2004.

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.

The Authority failed to comply with Part 1 of FOISA by failing to reasonably interpret request (i), and by failing to identify, locate, retrieve and properly consider all of the information that fell within scope of request (i).

The Commissioner therefore requires the Authority to provide the Applicant with a revised review outcome, in compliance with section 21 of FOISA, which demonstrates that it has:

- interpreted request (i) to include all of the works carried out under the £6 million contract,
- carried out thorough and comprehensive searches for all of the information falling with scope of the Applicant's request (evidence of these searches should be provided to the Commissioner),
- considered whether any of the information is environmental information as defined in regulation 2(1) of the EIRs,
- reached a decision on the information identified as a result of those searches and which either discloses this information to the Applicant or notifies the Applicant of any relevant exemptions/exceptions that may apply. This should include the information previously disclosed to the Applicant in order that he has one complete response.

The above actions should be carried out by **7 July 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.

Jennifer Ross
Deputy Head of Enforcement

22 May 2025