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Commissioner  
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# Decision Notice 166/2025

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## Forecast income from proposed visitor levy

Applicant: Anonymous

Authority: Argyll and Bute Council

Case Ref: 202500390

### Summary

The Applicant asked the Authority for the exact and specific calculation and the data relating to a proposed visitor levy in Argyll and Bute. The Authority stated that it did not hold the information requested and explained why. The Commissioner investigated and found that the Authority had failed to fully engage with the terms of the request and that it had failed to provide adequate submissions to justify its position. He required the Authority to reconsider the Applicant's request, carry out fresh searches for the information requested and provide the Applicant with a revised review outcome.

### 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).

### Background

1. On 8 January 2025, the Applicant made a request for information to the Authority information relating to a proposed visitor levy in Argyll and Bute. He referred to a spreadsheet that had been disclosed in response to a previous information request and asked for (among other things) "the exact and specific calculation and the data which yield an annual income of £9 million as it is not apparent from the Excel file".

2. The Authority responded on 5 February 2025. It explained that the calculations referred to were carried out on its behalf by the University of Edinburgh Business School (the University). It said it provided the University with Scottish Tourism Economic Activity Monitor (STEAM) and Commercial Real Estate Star (CoSTAR) data, which the University used to provide a model (which it disclosed to the Applicant).
3. On 6 February 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because the Authority had not responded to the question posed in his request. He noted that the Authority had provided the final figure of forecast income, not the calculation of how it arrived at the figure (as requested).
4. The Authority notified the Applicant of the outcome of its review on 11 March 2025. 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.
5. On 12 March 2025, 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 believe 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, 19 March 2025, 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 the application and to answer specific questions relating to how it established it held no information falling within scope of 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) – 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. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. 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 lies, the Commissioner must first of all consider the interpretation and scope of the request.
13. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant recorded information is actually held by the public authority (or was, at the time it received the request).

#### *The Applicant's submissions*

14. The Applicant noted that the Authority had actively promoted the potential income from the visitor levy as £9 million and provided an example of this. He said several requests had been made to the Authority as to specifically how the £9 million figure was calculated, but the Authority had consistently failed to provide this information.
15. The Applicant submitted it was not "believable" that the Authority did not hold the information requested, given its active promotion of this income and the fact it must have had some sound financial basis for publicly making this claim.
16. The Applicant noted that VisitScotland's guidance on the visitor levy for local authorities stated: "The forecasting of revenue from a visitor revenue is an important process to help understand the viability of introducing a visitor levy." He considered the fact that he had now asked three times for the calculation for the Authority's £9 million revenue forecast for the visitor levy, without getting a "proper answer, was a "serious red flag".

#### *The Authority's submissions*

17. As rehearsed earlier, the Authority stated in its initial response that the calculations requested were carried out on its behalf by the University.
18. In its review outcome, the Authority said that the calculation of the projected annual income had three parts: the data, the statistical model used for the calculation and the configuration applied to the statistical model by the University.
19. In terms of the data, the Authority explained that the analysis primarily used CO-STAR data for hotel accommodation and STEAM data for non-serviced accommodation. These data sources had been bought by the Authority under licence, which restricted it from sharing the data without the express permission from the data owners. While other sources (like KeyData) were reviewed, they did not offer enough historical depth for reliable forecasting in the view of the analysts at the University.
20. In terms of the modelling approach, the Authority stated that a Seasonal ARIMA model was applied to capture both the seasonal trends and the underlying patterns in the data. (ARIMA stands for Auto-Regressive Integrated Moving Average, a popular statistical model used for analysing and forecasting time series data.)
21. The Authority also explained that the data were not adjusted specifically for the COVID-19 period, although this was considered. It was considered that making any such adjustment would be debatable, so the forecast therefore reflected the raw data as supplied.
22. The Authority stated that the University's report therefore did not just look at past data, it actively incorporated future industry trends into the forecast.
23. During the investigation, the Authority explained that it could not provide the detail of the configuration applied to the statistical Seasonal ARIMA model used by the University to

reach the estimated figure of £9 million, using CO-STAR data for hotel accommodation and STEAM data for non-serviced accommodation that it sent to the University.

24. The Authority was asked whether it held a copy of the calculations it said were undertaken by the University. The Authority said it did not and that it only held the report which brought out the estimated figure of £9.17 million.
25. However, the Authority confirmed that it had carried out no searches in response to the Applicant's information request and that no members of staff other than the Visitor Levy implementation team had been consulted.

#### *The Commissioner's view*

26. Having considered all relevant submissions and the terms of the request, the Commissioner is not satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any recorded information that fell within the scope of the request.
27. The Authority said that it did not hold the exact and specific calculation requested by the Applicant as the calculations were carried out on its behalf by the University. On the face of it, this explanation appears plausible, but the Authority said that it had not carried out any searches in response to the request. (During the investigation, the Commissioner advised the Applicant how he could make an information request to the University. He considers the Authority should have given this advice to the Applicant in response to his request.)
28. Where an authority has told a requester that it does not hold information, evidence of the authority's searches will usually be a key consideration during the Commissioner's investigation. As a minimum, authorities should be able to provide the Commissioner with the following information:
  - (i) details of the records or locations which were searched.
  - (ii) why these were the relevant records and locations;
  - (iii) the keywords used;
  - (iv) which staff were involved and why they were considered relevant;
  - (v) the outcome of the searches;
  - (vi) evidence that the searches have been carried out, including the outcome of the searches.
29. Furthermore, the Applicant asked for the "the exact and specific calculation **and the data...**" (emphasis added). In the Commissioner's view, the Authority failed to fully engage with the element of the Applicant's request relating to "the data". The Authority appeared to suggest that it sent these data to the University, though it said it was prevented from sharing these data without express permission from the data owners.
30. In the circumstances, the Commissioner cannot uphold the Authority's claim that it holds no information falling within the scope of the request. He therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information requested, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA).
31. If the Authority wishes to withhold any information falling within the scope of the request, it must clearly state that the information is exempt from disclosure, specify exactly the

exemption being applied, state why the exemption applies and, if the exemption is subject to the public interest test, state why the public interest is in favour of maintaining that exemption. Similarly, if the Authority wishes to maintain its position – after carrying out adequate, proportionate searches – that it holds no information falling within the scope of the request (or a discrete element of it), then it must issue a notice that the information is not held.

## **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 Commissioner finds that the Authority failed to fully engage with the terms of the Applicant's request and to satisfy him that it does not hold any information relevant to the request. As a result, he finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by 11 August 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**

**27 June 2025**