



Scottish Information
Commissioner
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Decision Notice 165/2025

Communications about the role of Director, Economy, Place and Learning

Authority: Perth and Kinross Council
Case Ref: 202401663

Summary

The Applicant made a three-part request asking the Authority for communications between specified parties and meeting minutes about the role of Director, Economy, Place and Learning during a given time period. The Authority responded that it did not hold any information which fell within scope of the request.

The Commissioner investigated and found that the Authority did hold information for the first part of the request. The Commissioner was not satisfied that the Authority had interpreted the request reasonably and he required the Authority to carry out additional searches and issue a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (3) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 24 September 2024, the Applicant made a request for information to the Authority. He asked for:

- (i) All communications between the Executive Team regarding the removal of Alison Williams from the role of Director, Economy, Place and Learning, from June to present.
 - (ii) Minutes from meetings attended by the Executive Team regarding the position of Alison Williams and the removal of the role of Director, Economy, Place and Learning, from June to present.
 - (iii) All communications between the Executive Team and David Littlejohn about the position of Alison Williams and the removal of the role of Director, Economy, Place and Learning, from June to present.
- 2. The Authority responded on 7 November 2024 that it did not hold any of the information requested. The Authority gave the Applicant notice, in terms of section 17(1)(b) of FOISA, that this information was not held.
 - 3. Later that same day, on 7 November 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he did not consider the Authority's response to be credible. He did not believe that the Authority held no information within the scope of his request.
 - 4. The Authority notified the Applicant of the outcome of its review on 6 December 2024. The Authority upheld its original decision without modification.
 - 5. On 20 December 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of the Authority's review because he did not believe that the Authority held no information about the loss of a senior director, or the complete removal of a high-powered and high-salaried position within the Authority.

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 9 January 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was 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. These related to how it carried out searches for information captured by the request and how the decisions it took in relation to the subject matter of the request were communicated.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

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 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 by section 1(4). If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice 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 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 Authority's change of position in relation to request (i)

13. During the investigation, the Applicant submitted a different request to the Authority for information on the same subject. In responding to the Applicant's new request, the Authority disclosed some information in three emails which fell within the scope of part (i) of the request that is under consideration here. The Authority apologised for failing to identify this information following its review of the original request (the request under discussion in this decision).
14. As the Authority failed to disclose information that fell within the scope of part (i) of the Applicant's request, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA, in its handling of this part of the request.

Searches

15. The Authority maintained that it held no information in relation to parts (ii) or (iii) of the request.
16. For context, the Authority explained that its executive leadership structure (ELT) at the time the request related to four individuals; Chief Executive, Deputy Chief Executive, the Director of Health & Social Care and Ms Williams (who was the Director of Economy, Place and Learning).
17. The Authority explained that the three remaining members of the ELT, and David Littlejohn, carried out searches of mailboxes, Teams, WhatsApp and saved files in relation to meetings and it provided the Commissioner with details of those searches.
18. The Authority submitted that it had interpreted "Communication" as communication by exchanging letters, emails, or other messages. "Minutes of meetings" had been interpreted as a formal written record of what happened during a meeting, including decisions made and who was in attendance. The Authority argued that handwritten notes or diary entries were not considered relevant to the request unless they were a formal written record of a meeting, or a letter or message to/from a relevant person.

19. The Authority maintained its position that all communications falling within scope of the requests were verbal and not recorded. The Authority submitted that there were nine ELT meetings between July and 24 September 2024 and that the minutes of these meetings did not contain any information within scope of the requests. It provided evidence of its searches and also confirmed that handwritten or informal notes taken at meetings by individuals, were not searched as they were not deemed to fall within scope.
20. The Authority submitted that it had a "Messaging Apps Policy" which stated that the only messaging app approved for conducting business was Microsoft Teams. The Authority submitted that Microsoft Teams was the only messaging app which could be downloaded to devices owned by the Authority, and this app could also be downloaded to personal devices.
21. The Authority described some of the meetings that took place in relation to the subject of the request. The Authority submitted that, on 30 July 2024, there was an ELT meeting where the restructuring of the Council Leadership Team and interim arrangements were discussed. The Authority submitted that the minutes of this meeting do not mention the departure of Ms Williams or the removal of the role for Director, Economy, Place and Learning. The Authority submitted that the discussion about Ms Williams' departure and the removal of the role took place in private, without a minute being taken.
22. The Authority submitted that a meeting took place between ELT and its senior leadership team (SLT), on 5 August 2024, where it was advised that Ms Williams had left the employ of the Authority and, again, this meeting was not minuted.
23. The Authority submitted there was a further meeting of the SLT on 8 August 2024, where the restructuring of the Authority's leadership team was discussed, but no minutes were taken.
24. When asked about its searches in relation to request (iii), communications which involved David Littlejohn (who was not part of the ELT but who was a strategic lead) the Authority commented that, in general terms, communications to/from/between employees who were strategic leads did not come under the scope of this request, apart from those communications involving David Littlejohn. The Authority also argued that correspondence relating to interim arrangements, i.e. minutes of meetings where the removal of the role for Director, Economy, Place and Learning was not discussed, did not come under the scope of this request.
25. As part of the investigation, the Authority was asked to describe the discussions that took place between David Littlejohn and the Chief Executive about the removal of Ms Williams and her post. The Authority declined to do so, because it did not consider this fell within the scope of the Applicant's requests. The Authority submitted that it did not hold any recorded information between the ELT and David Littlejohn about the position of Alison Williams and the removal of the role for Director, Economy, Place and Learning.
26. The Authority acknowledged the Applicant's view and commented that it understood why the Applicant might believe it held more information in relation to his request. However, it submitted that it could only consider whether it actually held the information requested (at the time the requests were received) and whether the Authority complied with FOISA in responding to those requests.

27. The Authority submitted that providing information in response to a request under FOISA does not necessarily provide the Applicant with a full picture of exactly how and why decisions and discussions were made – these can take place within a person’s head, verbally, or not between individuals in the Council which the Applicant had assumed would be involved in those decisions.

The Commissioner’s view

28. The Commissioner has considered the Authority’s submissions and evidence carefully. He has some concerns about the Authority’s interpretation of the request. He understands, from the Authority’s comments, that it appears to have interpreted the term “ELT” as referring to the ELT as a whole rather than any constituent part of it, and that the requests sought communications in which every individual in the ELT participated. The Commissioner is not clear that was the Applicant’s intention. Given the circumstances and timing of the request, the Commissioner considers it is likely that the Applicant intended part (i) of his request to refer to communications between any two members of the ELT and part (iii) to refer to any one member of the ELT and David Littlejohn.
29. The Authority appears to have taken a similar approach to the term “SLT”, interpreting this term to apply to SLT as a whole, rather than considering whether communications to/from the SLT might include communications to/from David Littlejohn.
30. The Commissioner would note that in cases where an authority is unsure what is being asked, it can, and should, under section 1(3) of FOISA and, in line with the requirements of the [Scottish Ministers’ Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA](#)¹, obtain clarification from the applicant. It did not do so in this case.
31. The Commissioner has also considered the Authority’s searches. The Commissioner notes that David Littlejohn provided a nil return for his searches, but no evidence of how those searches were carried out (for example, the search terms used, the systems searched, or the dates applied to the searches) has been provided to the Commissioner to persuade him that those searches were thorough.
32. Additionally, in document 6 of the evidence bundle, there is reference in one of the emails (25 August 2024 at 7:14PM) to a “presentation from Thursday SLT” which, depending on the nature and content, might be considered to fall within scope of request (iii) as a communication from ELT to David Littlejohn.
33. The Commissioner has considered the Authority’s policy on messaging apps. He notes the Authority’s policy that Microsoft Teams is the only communication app approved for use for the Authority. However, he also notes that there are circumstances in which other apps, such as WhatsApp, might be downloaded and used. Furthermore, from the wording of the policy document, it appears possible that personal devices might be used for business purposes. In these circumstances, there is a possibility that information falling within scope of the request could be held on personal devices and/or in other messaging apps.
34. In all the circumstances, the Commissioner is not satisfied that a reasonable interpretation of the request has been taken, or that adequate searches have been carried out.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

35. Given his concerns, the Commissioner requires the Authority to reconsider its interpretation of all three parts of the request and to carry out additional searches, including personal devices and other messaging apps, for any information falling within scope.

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 requests made by the Applicants.

Specifically, the Authority failed to comply with section 1(1) of FOISA by;

- failing to identify information captured by part (i) of the request, and
- failing to satisfy the Commissioner that it did not hold any other information relevant to the Applicant's request.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information captured by requests (i), (ii) and (iii), 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