



Scottish Information  
Commissioner  
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# Decision Notice 216/2025

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## Staff accommodation

Authority: Highland Health Board

Case Ref: 202401370

### Summary

The Applicant made a request to the Authority for information related to staff accommodation. The Authority provided some information, but it refused to respond to parts of the request on the grounds that they were either vexatious or the information was already available to the Applicant.

The Commissioner investigated and found that the Authority was entitled to refuse to respond to those parts of the request where information was otherwise accessible or where it had considered the requests vexatious.

However, the Commissioner found that the Authority had failed to comply with FOISA in responding to request (xiv). He required the Authority to carry out a new review of that request.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 17(1) (Notice that information is not held); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a), (b), (c) and (f) of the definition of “the Act”, “applicant” and “the Commissioner” (Interpretation); 5(1) (Duty to make environmental information available on request); 6(1) (Form and format of information); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

## Background

1. On 11 July 2024, the Applicant made a request for information to the Authority. He asked the Authority to respond to the following:
  - (i) What income was made from the Staff Accommodation premises in FY 2023?
  - (ii) How much was spent on the Staff Accommodation premises in FY 2023? (Please include a detailed list of the works and costs carried out on the premises, including works carried out by external contractors and copies of the Maximo Report Works by External Contractors.)
  - (iii) A detailed breakdown of all the charges and rental charges applied in every premises of the Staff Accommodation in the current FY 2024.
  - (iv) Full name, job position and pay band (including bonuses, awards, benefits, donations, gifts, expenses, allowances and any other contributions that they have received on top of their salaries in FY 2023) of the individuals within and outwith your organization involved in the decisions, processes and identification of the criteria used to decide the amount of money that must be taken from the residents of the Staff Accommodation premises in the current FY 2024 and that choose how to spend that money.
  - (v) Unredacted copies of all the recorded information (for example, minutes of meetings, audio/video recordings, letters, emails, notes, etc.) regarding the information requested in Q.4.
  - (vi) Copies of the Rent Increase Notices that according to your Scottish legislation, you must give to the residents at least three months before the rent increase takes effect.
  - (vii) Full name and job position of the individuals with overall responsibilities for the Rent Increase Notices.
  - (viii) Copies of all the documents required by your Scottish legislation and your local partner The Highland Council to run the Staff Accommodation premises from 13 May 2023 onwards.
  - (ix) Who monitors the CCTV system at the Staff Accommodation?
  - (x) What is the purpose and scope of it?
  - (xi) What kind of licences, authorizations or legal paperwork is needed to run it?
  - (xii) What systems are in place to ensure compliance with data protection and privacy legislation when the pan and tilt CCTV system is pointed to the windows of the nearby flats?
  - (xiii) Full name and job position of the individuals with overall responsibilities for the CCTV system.
  - (xiv) The names of the external bodies that assess compliance with the legislation of the CCTV system.

2. The Authority replied to the Applicant on 8 August 2024. It notified the Applicant that it considered parts (ii) and (viii) of the request to be seeking environmental information and that it would handle these parts under the EIRs. It provided some information in response to part (ii) of the request and, for part (viii), the Authority referred the Applicant to information published on its intranet service (for employees of the Authority). The Authority also applied regulation 10(4)(b) of the EIRs to request (viii) arguing that the request was manifestly unreasonable, as the Applicant could access the information within the Raigmore Staff Accommodation Office.
3. In relation to the requests that were seeking non-environmental information, the Authority provided the Applicant with some information falling within the scope of requests (i) and (ix) to (xiv) of the request. However, the Authority refused to respond to requests (iv), (v) and (vii) in line with section 14(1) of FOISA, on the grounds that they were vexatious, and it withheld information falling within the scope of requests (iii) and (vi) under section 25(1) of FOISA, arguing that it was already accessible to the Applicant via the Intranet or its staff accommodation office.
4. On 9 August 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant did not consider that the information disclosed to him fully answered those parts of his request, and he was dissatisfied that he had not been given the information he had asked for in parts (iii), (vi) and (viii) of his request; he stated that he was not able to access the intranet service or the staff accommodation office. The Applicant also disagreed that the remainder of his request was vexatious.
5. The Authority initially refused to carry out a review, but subsequently did so on 8 October 2024. It later issued a revised review outcome on 10 October 2024 because it had overlooked one part of the request. The Authority upheld the original response in full without modification.
6. On 14 October 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant challenged the Authority's response to parts (iii), (iv), (v), (vi), (vii), (viii) and (xiv). He disagreed with the exemptions/exceptions that had been applied and he argued that the information should be disclosed in full and published on [What Do They Know?](https://www.whatdotheyknow.com/)<sup>1</sup>.

## Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 8 November 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.
9. The case was subsequently allocated to an investigating officer.

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<sup>1</sup> <https://www.whatdotheyknow.com/>

## Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
11. In his application, the Applicant challenged the Authority's handling of requests (iii), (iv), (v), (vi), (vii), (viii) and (xiv). Consequently, the Commissioner will only consider the Authority's handling of these requests.

### ***Handling of the request – FOISA or the EIRs***

12. In [Decision 218/2007](#)<sup>2</sup>, the Commissioner confirmed (at paragraph 51) that, where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
13. In this case, the Authority considered that request (viii) was a request for environmental information, and it handled that request under the EIRs.
14. The Commissioner is satisfied that information falling within the scope of request (viii) is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs. Particularly paragraphs (a), (b), (c) and (f) of that definition.
15. In what follows, the Commissioner will therefore consider the Authority's response to request (viii) in terms of the EIRs.
16. The Commissioner will consider the Authority's handling of the remaining requests (being (iii), (iv), (v), (vi), (vii) and (xiv)) in terms of FOISA.

### ***The Authority's change of position during the investigation***

#### ***Request (viii)***

17. The Authority acknowledged that it had applied regulation 10(4)(b) for request (viii) but, during the investigation, it instead sought to rely on regulation 6(1) of the EIRs for this request. It explained that it had originally applied regulation 10(4)(b) to request (viii) as the information was otherwise accessible to the Applicant, but it now considered that regulation 6(1) of the EIRs (Form and format of information) was more appropriate.
18. As the Authority has accepted that it misapplied regulation 10(4)(b) of the EIRs to request (viii), the Commissioner must find that this exception was wrongly applied.

#### ***Request (xiv)***

19. The Authority initially provided the Applicant with information about its use of CCTV in response to request (xiv) and others. In the Authority's updated review of 10 October 2024, the Authority stated that it had disclosed all the information it held in relation to this request. During the investigation, the Authority changed its position regarding request (xiv). The Authority submitted that it should have issued a notice under section 17(1) of FOISA that it did not hold any information within scope of request (xiv).
20. Given this, the Commissioner must find that the Authority should have issued a notice under section 17(1) of FOISA, advising the Applicant that it did not hold the information he had requested. In failing to do so, the Authority failed to comply with section 17(1) of FOISA.

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<sup>2</sup> <https://www.foi.scot/decision-2182007>

21. The Authority is required to issue the Applicant with a revised review outcome, detailing its current position regarding request (xiv).

***Information otherwise accessible***

22. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
23. Similarly, regulation 6(1)(b) of the EIRs provides that a Scottish public authority shall comply with a request unless the information is already publicly available and easily accessible to the applicant.
24. The Authority applied section 25(1) of FOISA to requests (iii) and (vi), and it applied regulation 6(1)(b) of the EIRs to request (viii).

***The Applicant's comments***

25. The Applicant did not consider that the Authority had responded to requests (iii), (vi) and (viii). He argued that these requests did not require the Authority to release information regarding its intranet system.
26. The Applicant submitted that he was not "an authorised person" and did not need access to the Authority's intranet system to view the information requested.
27. The Applicant argued that the information requested should be disclosed and published on [www.whatdotheyknow.com](http://www.whatdotheyknow.com).

***The Authority's comments***

28. The Authority submitted that all its employees were given an NHS Microsoft Office 365 account which provided an NHS online identity, including an email address, which allowed employees to access its internal intranet. The Authority explained that this included access to payroll/wage records, statutory and mandatory training, adverse incident reporting, alerts, announcements and other corporate information.
29. The Authority submitted that its intranet system was the main method by which it communicated with employees and ensured that staff maintained an up-to-date knowledge of matters within the organisation.
30. The Authority submitted that, as an employee, the Applicant had a Microsoft Office 365 account for the purposes of accessing organisational information and to allow the completion of mandatory training courses. The Authority submitted that the Applicant's online account was live and available to him.
31. The Authority maintained that the information the Applicant asked for in requests (iii) and (viii) was (and is) readily available to the Applicant on the intranet.
32. The Authority submitted that information covered by request (vi) would have been issued to the Applicant directly as a tenant at his home address and, in the event that it was not, he was able to obtain this from the Accommodation Office.
33. The Authority argued that the Applicant had chosen not to access the information covered by requests (iii), (vi) and (viii) that he was directed to but had, instead, chosen to submit formal FOI requests for it.

### ***The Commissioner's view***

34. The Commissioner's [briefing on Section 25 of FOISA](#)<sup>3</sup> is quite clear on how the matter of information that is otherwise accessible should be interpreted. Paragraph 8 states that this is one of the few exemptions in FOISA where the identity of the requester is relevant, because the exemption applies to information that the requester (i.e. the person making the request) can reasonably obtain. The Briefing goes on to describe an example of information that might be widely available to the public but not to the requester, for example where a visual impairment might prevent access to information in text only format.
35. However, the Commissioner considers that the opposite can be applied in the circumstances of this case in relation to requests (iii) and (viii) – the information is readily available to the requester (the Applicant) as an employee with an active online account, given to him by the Authority, from which he can access the intranet if he chooses to do so. There is no doubt that the information, by virtue of being published on the internal intranet for employees, is not accessible to the wider public. Nonetheless, the Briefing is clear that requested information does not necessarily need to be disclosed to “everyone”, rather the person who asked for it must be able to access it.
36. Similarly, in relation to request (vi), the information asked for is given to tenants of the staff accommodation or otherwise available from the accommodation office.
37. Although disclosure under FOISA or the EIRs is widely accepted as disclosure to the wider public domain, there is no requirement in either of these instruments which instructs public authorities to ensure that information covered by any request must be made available to everyone in the wider public domain, in all circumstances. Such a requirement would not be practical, because not everyone in the wider public domain has (or need have) equal access to information readily accessible to the requester. There will, of course be a number of barriers such as language, geography, physical capabilities, financial capabilities etc, which may affect accessibility, even to the requester, but the legislation cannot reasonably be interpreted in the way the Applicant suggests here.
38. The Applicant has not submitted any argument to the Commissioner (or to the Authority in his requirement for review) that he cannot access the information covered by requests (iii), (vi) and (viii) in the way that the Authority has suggested.
39. On balance, therefore, the Commissioner is not persuaded that there is any impediment to him obtaining the information in the ways suggested by the Authority.
40. For these reasons, the Commissioner considers that the Authority was entitled to apply section 25(1) of FOISA to requests (iii) and (vi) and was entitled to apply regulation 6(1)(b) of the EIRs to request (viii).
41. The Commissioner is satisfied that the Authority handled requests (iii), (vi) and (viii) in accordance with the requirements of FOISA and the EIRs.

### ***Were requests (iv), (v) and (vii) vexatious?***

42. The Authority applied section 14(1) of FOISA to requests (iv), (v) and (vii) because it considered these requests to be vexatious.

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<sup>3</sup> [https://www.foi.scot/sites/default/files/2023-05/BriefingSection25InformationOtherwiseAccessible\\_25.5.23.pdf](https://www.foi.scot/sites/default/files/2023-05/BriefingSection25InformationOtherwiseAccessible_25.5.23.pdf)

43. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
44. The Commissioner's [guidance](#)<sup>4</sup> on the application of section 14(1) of FOISA states:
- "There is no definition of 'vexatious' in FOISA. The Scottish Parliament considered that the term 'vexatious' was well-established in law and chose to give the Commissioner latitude to interpret the term in that context, so that the interpretation might evolve over time in light of experience and precedent."
45. In the Commissioner's view, there is no single formula or definitive set of criteria that allow a formulaic approach to be taken to determining whether a request is vexatious. Each request must be considered on the merits of the case, supported by evidence, clear evaluation and reasoning. Although this is not an exhaustive list, the following factors will be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
- (i) it would impose a significant burden on the public body
  - (ii) it does not have a serious purpose or value
  - (iii) it is designed to cause disruption or annoyance to the public authority
  - (iv) it has the effect of harassing the public authority; or
  - (v) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
46. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.
47. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, he acknowledges that the identity of a requester, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.
48. The Commissioner's guidance also says that requesters must not be denied the opportunity to make a genuine information request. Requests may be inconvenient and meeting them may at times stretch an authority's resources, but these factors are not, on their own, sufficient grounds for an authority to deem a request vexatious.

#### *The Applicant's comments*

49. The Applicant disagreed with the Authority that these requests were vexatious. He argued that requests (iv) and (v) sought information related to specific financial years which had not been asked about previously, and he did not understand how that could be vexatious or represent a continuing pattern of behaviour designed to harass the organisation.

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<sup>4</sup> <https://www.foi.scot/sites/default/files/2023-07/BriefingSection14VexatiousorRepeatedRequests.pdf>

50. It was the Applicant's view that the Authority applied section 14(1) to his requests to prevent the release of the information requested.
51. The Applicant submitted that, according to information previously disclosed to him, less than 2% of income received in financial year 2023 was reinvested in staff accommodation. He argued that the individuals who made decisions about how staff accommodation income was spent should be accountable for those decisions, even more so if those individuals had something to gain from it (for example, bonuses and awards) and given that those decisions affected residents' lives.
52. On request (vii), the Applicant submitted that the information should be disclosed and published on [www.whatdotheyknow.com](http://www.whatdotheyknow.com).

#### *The Authority's comments*

53. The Authority stated that it wished to rely on submissions made in a letter to the Commissioner on 11 October 2023 in relation to a previous appeal by the same Applicant, alongside the Decision Notice for that appeal ([Decision 065/2024](#)<sup>5</sup>). In that letter the Authority gave its reasons for considering these parts of the request to be vexatious. The Authority explained that it had handled a number of previous requests from the Applicant on the same, or similar, subject matter over the previous two years and submitted that, whilst responding to each request was not, in itself, burdensome, the number of requests and requests for review on these issues was, overall, burdensome on its small team of staff. The Authority also gave its view on circumstances, unrelated to FOI, that may have impacted negatively on the Applicant's relationship with the Authority. The Authority's arguments can be read in full in Decision 065/2024.
54. The Authority submitted that this latest appeal to the Commissioner related to a long running series of requests from the Applicant between 2010 and 2024. The Authority argued that, as part of this, the Applicant often threatened to make appeals to the Commissioner at the outset and it considered this represented an ongoing attempt to harass the Authority and to target specific individuals within it.
55. The Authority commented that it had previously offered to arrange a meeting between the Head of Facilities and the Applicant so that the Applicant could discuss his concerns directly but the Applicant had not taken up the offers made to him.

#### *The Commissioner's view*

56. The Commissioner has considered the circumstances of this case alongside those discussed in his previous Decision 065/2024.
57. The Commissioner notes the similarities between requests 3, 7 and 8 discussed in Decision 065/2024 and requests (iv), (v) and (vii) that are under his current consideration.
58. The Commissioner acknowledges that the previously discussed requests cover a different financial year to those under current consideration, but, given all the circumstances discussed in the both the previous decision and in this decision, he does not consider this difference in year makes any material difference. The Commissioner previously found these requests to be vexatious by having the effect of harassing the public authority and he is not persuaded that the requests under current consideration have any greater purpose.

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<sup>5</sup> <https://www.foi.scot/decision-0652024>

59. In all of these circumstances, the Commissioner accepts that requests (iv), (v) and (vii) are vexatious and the Authority was entitled to apply section 14(1) of FOISA in refusing to respond.
60. The Commissioner is satisfied that the Authority complied with Part 1 of FOISA in refusing to respond to requests (iv), (v) and (vii).

## Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority was entitled to apply section 25(1) of FOISA to requests (iii) and (vi), and the Authority was entitled to apply section 14(1) of FOISA to requests (iv), (v) and (vii). In these respects, the Authority complied with Part 1 of FOISA.

The Commissioner also finds that the Authority was entitled to apply regulation 6(1)(b) of the EIRs to request (viii), and in this respect, the Authority complied with the EIRs.

However, in failing to notify the Applicant under section 17(1) of FOISA that it held no information within scope of request (xiv), the Authority failed to comply with Part 1 of FOISA.

The Commissioner therefore requires the Authority to issue a revised review to the Applicant, in relation to request (xiv) by **31 October 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**

**16 September 2025**