



Scottish Information
Commissioner
www.foi.scot

Decision Notice 217/2025

Information concerning Employment Tribunal records

Applicant: The Applicant
Authority: North Lanarkshire Council
Case Ref: 202500764

Summary

The Applicant asked the Authority for information relating to Employment Tribunal proceedings that involved a named employee over a particular timeframe. The Authority notified the Applicant that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

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 2024, the Applicant made a request for information to the Authority. He asked for information relating to Tribunal cases that the Authority was defending, with specific requests for case references, dates, the names of defence counsel, the ruling and, if cases were withdrawn, any settlement figures and the names of the plaintiffs.
2. The Authority responded on 31 January 2024. It refused to comply with the request, stating that the cost of responding to the request would exceed the amount prescribed for the purposes of section 12 of FOISA.

3. On 31 January 2024, the Applicant made a new, narrowed request for information. He asked the Authority for information relating to Employment Tribunal cases only [as opposed to all Tribunals] where the Authority was in defence, and where a named employee was the Primary Defence Counsel, including case reference numbers, dates, rulings and withdrawals, settlement figures and plaintiff names. He required the scope of the request to extend from “the mid-nineties to the mid-twenties not exceeding 2001.”
4. The Authority responded on 28 February 2024. It refused this narrowed request under section 12 of FOISA, arguing that this new request did not significantly narrow the scope of the original request and the cost of providing the information would still exceed the cost limit prescribed.
5. On the same day, the Applicant requested a review of the Authority’s response, arguing that the scope of his request dated 31 January 2024 was significantly reduced from the related, but separate, request lodged on 8 January 2024.
6. The Authority provided the Applicant with the outcome of its review on 27 March 2024, which upheld its reliance on section 12(1) of FOISA.
7. The Applicant wrote to the Commissioner on 11 October 2024, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the Authority’s decision to refuse his request of 31 January 2024 under section 12 of FOISA.
8. The Commissioner issued [Decision 053/2025](#)¹ on 27 February 2025, which found that the Authority had misinterpreted the timeframe of the Applicant’s request. The Commissioner required the Authority to reconsider the request and issue a revised review outcome.
9. The Authority notified the Applicant of the outcome of its revised review on 17 March 2025. It informed him that it did not hold the information requested and explained why.
10. On 14 May 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He subsequently clarified that he was dissatisfied with the outcome of the Authority’s revised review because he did not believe that the Authority did not hold the information requested.

Investigation

11. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
12. On 3 June 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
13. 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 established that it did not hold the information requested.

Commissioner’s analysis and findings

¹ <https://www.foi.scot/decision-0532025>

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

Section 17(1) of FOISA – Notice that information is not held

15. 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. The qualifications contained in section 1(6) are not applicable in this case.
16. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
17. 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.
18. The Commissioner 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) held by the public authority.

The Authority's submissions

19. In its review outcome, the Authority explained that it had carried out both electronic and physical searches for the information requested.
20. In terms of the electronic searches, it said that the Legal Support Team undertook searches of the Authority's electronic legal time recording system. While the search results indicated that the named employee had been involved in a number of Employment Tribunal cases, the earliest record dated from 2008 – meaning that it fell outwith the scope of the request.
21. In terms of the physical searches, the Authority explained that in recent years it had taken steps to digitise physical historic files to ensure better organisation and tracking. Having conducted a search of relevant discs and examined their contents, the earliest file dated from 2007 – again, meaning that it fell outwith the scope of the request.
22. The Authority also noted that its [Retention Schedule](#)² provides that Employment Tribunal files are subject to deletion six years after the date of termination.
23. During the investigation, the Authority provided further details of the steps it had taken to establish whether it held any information relevant to the Applicant's request. In terms of the physical searches, it explained that the discs had been retrieved from a basement storage room and that each disc was marked up with file references for the files contained on the disc and the year of the files.

² <https://www.northlanarkshire.gov.uk/your-council/managing-information/data-protection/north-lanarkshire-council-records-retention-schedule>

24. The Authority said that it had checked all of the discs, with the earliest date identified as being from 2007. It also provided the Commissioner with an email chain between employees (all of whom work for legal services) regarding the searches undertaken.
25. The Authority noted that the information requested by the Applicant would be 24-29 years old. It said that, in all likelihood, this information would therefore have been deleted or destroyed.
26. The Authority explained that the period in the Applicant's request predated the central record management systems it currently used and that it did not have a dedicated Records Manager until around 2003. Accordingly, it said that there was no audit trail that confirmed the deletion or destruction of this information. However, it reiterated that all on-site records held by legal services had been searched – with no information identified for the period specified in the Applicant's request.

The Applicant's submissions

27. As stated above, the Applicant said that he did not believe that the Authority did not hold the information requested. He did not believe that it had been destroyed or deleted.
28. Specifically, the Applicant submitted that local authority records were held "in the public interest and for the National Registry Archives" and "any assertions the records are not digitised are falsehoods and given the inculpatory nature of the records required are in violation of [FOISA]".

The Commissioner's view

29. The Commissioner has taken account of all the relevant submissions provided by both the Applicant and the Authority.
30. As stated above, the information to be given is that held by the Authority at the time the request is received, as defined by section 1(4) of FOISA. The relevant question for the Commissioner is therefore not whether the information requested was previously held by the Authority, but whether it was held at the time of the Applicant's request.
31. Having considered all relevant submissions and the terms (particularly the timeframe) of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps (which included carrying out both electronic and physical searches) in the circumstances to establish whether it held any information that fell within the scope of the request.
32. Given the nature and age of the information requested and the explanations provided by the Authority, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request.
33. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case. Whether a public authority should hold information is not a matter for the Commissioner to decide.
34. The Commissioner therefore finds that the Authority was correct to inform the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

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

Cal Richardson
Deputy Head of Enforcement

16 September 2025