



Scottish Information
Commissioner
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Decision Notice 220/2025

Residential lease terms

Authority: City of Edinburgh Council
Case Ref: 202201324

Summary

The Applicant asked the Authority for information about residential leases. The Authority stated that complying with the request would exceed the £600 cost limit, and so it was not obliged to comply. The Commissioner investigated and found that the Authority was not entitled to refuse to comply with the request on grounds of excessive cost. He also found that it had failed to provide adequate advice and assistance to the Applicant.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002 \(FOISA\)](#)¹ sections 1(1), (2), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner).

[The Freedom of Information \(Fees for Required Disclosure\) \(Scotland\) Regulations 2004](#)² (the Fees Regulations) regulations 3 (Projected costs); 5 (Excessive cost – prescribed amount).

Background

1. On 8 July 2022, the Applicant made a request for the following information to the Authority:

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

² <https://www.legislation.gov.uk/ssi/2004/467/contents/made>

“Please publish the terms of all residential leases involving [the Authority] since 2015, including the Private Sector Leasing (PSL) Scheme, and the leases organised under contract with Link Group. Please include both leases in which [the Authority] pays private landlords ("leases from owners"), and leases in which the same homes are then rented out ("sublet") to residents.

Please include the rents every year for each home. For example, if there were 1,000 homes rented out, all rented out over seven years, then there should be 7,000 rows. Each row should include (1) a unique property identifier, (2) the year, (3) the monthly rent paid to the private owner, (4) the monthly rent paid by the resident, and (5) the number of bedrooms of the home.

Please exclude addresses, and personally identifying information. Please use a machine processable format, such as CSV. If the tables are organised differently, this is no problem as long as it is possible for me to construct the table on my own, e.g. if there are separate tables for leases from owners and sublets that are linked by a unique home identifier.”

2. The Authority responded on 8 August 2022, refusing the request in terms of section 12(1) of FOISA on the basis that it considered that the cost of complying would exceed the £600 cost limit set out in the Fees Regulations. The Authority stated that there were just under 40,000 rows of data to review over circa 2,000 properties. Having tested what would be involved in transferring the data into a presentable format, the Authority explained that an officer would need to assess each property individually to take into account rental amounts during the period of lease to both landlords and tenants, and also calculate management fees. The Authority assessed that this would take 20 minutes per property and therefore this task would take 666 hours to complete. At a staff cost of £15 per hour, the Authority estimated the total cost of complying with the request to be £9,990.
3. The Authority recognised that the Applicant may not have been aware of the size and scope of the information requested, and informed him that it may be possible to provide a portion of the information he was seeking, which would be considered as a new information request.
4. The Authority also confirmed, in terms of section 17 (Notice that information is not held) of FOISA, that it did not hold information prior to September 2016.
5. On 14 August 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision and queried certain aspects of the Authority's response. He asked the Authority to provide the information requested in a machine processable format.
6. The Authority notified the Applicant of the outcome of its review on 8 September 2022, fully upholding its original decision. The Authority explained that each Head Lease was individual to each property and landlord, so all individual leases would need to be individually interrogated. Those no longer on the scheme would take additional time to assess as the system being updated in the interim meant a full report could not be issued quickly or easily and, depending on the Head Lease version, some also had inbuilt uplifts determined by the CPI [Consumer Price Index] rate the previous November.
7. The Authority explained that rules set by the UK Department for Work and Pensions (DWP) dictated that the Authority could only pay 90% of the applicable Local Housing Allowance, in addition to paying a management fee as well as additional monies to cover the difference between Local Housing Allowance rates and the agreed lease payment. Tenant rent would therefore differ from what a landlord received, and the rent charge was based on the tenant's

income using a formula determined by the DWP, details of which were in the public domain. The specifics of each tenant rent would therefore need to be interrogated. Furthermore, rent may have increased over the length of a tenancy which gave further cause for each individual tenancy to be assessed for each year.

8. The Authority confirmed that the information was therefore not held in a central fashion, nor in a format which could be easily provided without undergoing the necessary assessment and interrogation described.
9. On 19 November 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he believed his request could be fulfilled at a low cost. He believed that the Authority held other records about each lease, for example, records about each payment it had made to landlords or received from tenants. The Applicant argued that financial records were usually stored in a centralised way so that the Authority could calculate cashflow and keep track of its spending and, that being the case, he believed that it could export the relevant portion of this database.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
11. On 6 December 2022, 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. The case was subsequently allocated to an investigating officer.
12. As the Authority had failed to provide the initial comments requested, it was again invited to comment on this application and to answer specific questions. These focussed on the Authority's justification for refusing the request on the basis that it would cost in excess of £600 to comply, and on what advice and assistance the Authority had given to the Applicant to help him to refine his request to bring it within the cost limit.
13. The Authority provided submissions to the Commissioner.

Commissioner's analysis and findings

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

The information held by the Authority

15. Section 1(4) of FOISA provides that 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.
16. In its submissions to the Commissioner, the Authority explained that the information relevant to the request was captured within a system managed by a third-party contractor, i.e. Curb/Link. It provided the Commissioner with a screenshot of the spreadsheet in evidence of the information captured.

17. In terms of the searches carried out to identify the information held falling within the scope of the request, the Authority's understanding was that neither the service nor the contractor had maintained a record of the searches carried out for the information. It further understood that the contractor had a new system and therefore it would not be possible to replicate any searches conducted at the time of the request.
18. The Authority confirmed that the screenshot of the spreadsheet provided was of the original spreadsheet, i.e. prior to any manipulation or extraction of data. It provided the Commissioner with an explanation of the data in each column, and how that related to the information requested.
19. Having considered the screenshot and the explanations provided by the Authority, the Commissioner is satisfied that the Authority holds the information requested by the Applicant. The question he must now address is whether the Authority was correct to refuse the Applicant's request on the basis that responding would exceed the £600 cost limit.

Section 12(1) (Excessive cost of compliance)

20. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently £600 (see regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.
21. The projected costs a Scottish public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs (whether direct or indirect) it reasonably estimates it will incur in locating, retrieving and providing the information requested, in accordance with Part 1 of FOISA. The maximum hourly rate an authority can charge for staff time is £15 per hour. The authority may not charge for the cost of determining (i) whether it actually holds the information, or (ii) whether or not it should provide the information.

The Authority's submissions on section 12(1)

22. In its submissions, the Authority provided the Commissioner with the following extract from an email from the contractor in support of its position that responding to the request would be cost excessive. The Authority stated that the contractor had advised that the work required would be carried out by an agency worker:

"X has tested what would be involved in transferring the data (first spreadsheet) into a presentable format (second spreadsheet). This involves assessing each property individually to take into account changes in rental amounts during the period of lease both to landlords and tenants and also calculate management fees. We assess this as requiring 20 minutes per property.

As we have circa 2,000 properties to assess, we estimate 666 man hours, which equates to 17.5 weeks for FT employee @ 37.5 hours per week.

Training would be required and also any absences would need to be provided for in the timescales, so an additional estimated 2.5 weeks in respect of timescales.

This amounts to an estimated 20 week timescale based on 1 FT employee, costs of which would amount to £9,990 (one agency staff capped at £15 per hour x 666 hours)."

23. The Authority stated that it had provided a detailed cost breakdown to the Applicant in its initial response.
24. The Authority submitted that the raw data needed to be read in conjunction with a knowledge of the terms of the specific leases at the relevant times, and explained the factors that required to be taken into consideration, including:
- Tenant rent could fluctuate depending on the terms of the Head Lease in place at the relevant time, and some leases had built-in CPI increases which were reflected in the figures, whereas some had a fixed rate for the duration of the lease.
 - Prior to 2019, management fees were included in the tenant rent, whereas from 2019 these were paid separately (however these, the Authority explained, could be filtered out).
25. The Authority was asked to explain whether the Applicant would be able to manipulate the raw data in the spreadsheet himself, to ascertain the information he was seeking. In response, the Authority submitted that the raw data would be extremely difficult to understand without a working knowledge of the service and how the data was derived. In its view, it believed the raw data would not be of use to the Applicant.
26. The Authority was asked to explain what would be involved in transferring the raw data into a “presentable format” (as referenced in its initial response) and why it believed that this was necessary. In response, the Authority stated that the raw data covered nearly 40,000 rows of data, which would require complex manipulations in several aspects across the timeframe it covered due to changes in the terms of Head Lease across that period. It believed that this task could only be undertaken and completed successfully in conjunction with access to its Property Management Systems.
27. The Authority was asked to explain its statement, in its review outcome, that “Those no longer on the scheme will take additional time to assess as the system being updated in the interim means a full report cannot be issued quickly or easily”. In response, the Authority explained that the system was not live, and therefore a manual review would be required to confirm who was still on the scheme before finalising the report for disclosure.

The Commissioner’s view on section 12(1)

28. The Commissioner has considered the Authority’s submissions, the screenshot of the spreadsheet showing the information captured, and the Authority’s explanations of the data in each column. He has also considered the Authority’s submissions in relation to the additional knowledge claimed to be necessary for a lay person to be able to manipulate the raw data, and its assertion that to transfer the data into a presentable format would require several complex manipulations.
29. Having considered the terms of the Applicant’s request, it appears to the Commissioner that the raw data itself, held in the columns relevant to those set out in the request, would appear to satisfy what the Applicant has asked for, without any of the complex manipulations which, the Authority has claimed, are necessary. The Commissioner considers that not only has the Authority failed to explain what these complex manipulations would involve, but it also failed to provide any sample costing exercise in support of this. While the Commissioner recognises that manipulation of the data may be necessary to provide a more rounded picture of the position relevant to each lease, this is not what the Applicant asked for.

30. Furthermore, the Commissioner cannot agree with the Authority's view that the raw data would be of no use to the Applicant. In his view, he questions how the Authority was able to reach that conclusion, given the terms of the Applicant's request and his requirement for review. While the Authority might believe that providing the raw data, i.e. without any manipulation or understanding of how it relates to the terms of the corresponding leases, would render the data meaningless and would be of no use to the Applicant, the fact remains that it may well be. Furthermore, the Commissioner considers that there is nothing to prevent the Authority providing context covering the aspects of concern they have highlighted, for example, explanation of the data held in the columns, relevant to the Applicant's request, and how they relate to the request.
31. Turning to the Authority's comments regarding "those no longer on the scheme", where it stated that a manual review would be required to ascertain who was still "on the scheme", the Commissioner can see nothing in the Applicant's request which limits the information to those leases that were still in play. Given this, the Commissioner fails to see how such a "manual review" would be necessary for the Authority to be able to respond to the Applicant's request.
32. The Commissioner is not satisfied that the Authority has adequately justified why locating, retrieving and providing the information required to respond to the Applicant's request would be cost excessive. The Authority has confirmed that information, not requested by the Applicant but held in the spreadsheet (i.e. relating to management fees) could be filtered out. The Commissioner notes that the Authority has not claimed that this would be an onerous or cost excessive task. He is not convinced that providing the raw data, as it exists in the columns containing the information falling within the scope of the Applicant's request, would exceed the £600 cost limit, even for approximately 40,000 rows of data held electronically.
33. In all the circumstances, therefore, the Commissioner cannot uphold the Authority's claim that it would be too costly to comply with the request.
34. The Commissioner finds, therefore, that the Authority was not entitled to rely on section 12(1) of FOISA in this case. He requires the Authority to carry out a further review and provide the Applicant with a revised review outcome, otherwise than in terms of section 12(1) of FOISA.

Section 15 (Duty to provide advice and assistance)

35. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Section 15(2) states that a Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 [the [Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information \(Scotland\) Regulations 2004](https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/)³] is, as respects that case, to be taken to comply with the duty to provide reasonable advice and assistance.
36. The Section 60 Code states, at section 5.1 in Part 2 (under "Authorities should offer advice at all stages of a request"):

"Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after

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

a request has been made, whilst the authority is handling the request, or after it has responded.” (Paragraph 5.1.1)

37. It further states, in section 9.4 in Part 2 (under “Where excessive costs apply”):
- “When refusing a request on cost grounds, it is good practice for the authority’s response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly.” (Paragraph 9.4.3)
38. In its submissions to the Commissioner, the Authority accepted that, in relation to helping the Applicant to reduce the costs involved in providing the information requested, it had not met its obligations under section 15 of FOISA.
39. While the Commissioner notes that the Authority did suggest to the Applicant, in its initial response, that it may be possible to provide him with a portion of the information requested, he is concerned that it did not provide him with any detail on how this could be achieved. In the Commissioner’s view, the Authority could have given the Applicant clearer, specific advice on how best to refine his request to bring it within the cost limit, rather than leaving the Applicant to “best guess” how this could be achieved. Authorities have a duty to advise applicants in this regard, and cannot assume that an applicant will know how an authority holds its records, or at what point providing the information requested would invoke the section 12(1) excessive cost provision.
40. The Commissioner therefore finds that, in failing to provide adequate advice and assistance to the Applicant, the Authority failed to comply with the requirements of section 15 of FOISA.

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 Commissioner finds that the Authority was not entitled to rely on section 12(1) of FOISA in responding to this request. He also finds that the Authority did not comply with its duty to provide advice and assistance in responding to the request, as required by section 15(1) of FOISA.

The Commissioner therefore requires the Authority to carry out a further review, and provide the Applicant with a revised review response, otherwise than in terms of section 12(1) of FOISA, by **3 November 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.

Jill Walker
Deputy Head of Enforcement

17 September 2025