



Scottish Information  
Commissioner  
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# Decision Notice 001/2026

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## Green Freeports

Authority: Scottish Ministers  
Case Ref: 202500559

### Summary

The Applicant asked the Authority for information about Green Freeports in Scotland. The Authority informed the Applicant that it did not hold the particular information requested and explained why this was the case. The Commissioner investigated and found 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 7 March 2025, the Applicant made a multi-part request for information to the Authority seeking information about Green Freeports. Only parts 1a, 2a (for information other than “security and illicit activity”), 2c, 3b, 4b and 5c form part of the Applicant’s application to the Commissioner. These are set out in full in the Appendix to this Decision Notice. (The Appendix forms part of this Decision Notice).
2. The Authority responded on 20 March 2025. It informed the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested for parts 1a, 2a (for information other than “security and illicit activity”), 2c, 3b, 4b and 5c. For each of these parts, the Authority provided additional and/or contextual information to be of assistance or to explain why this was the case.

3. On 21 March 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not agree that the Authority did not hold the information requested. He explained why he believed this to be the case.
4. The Authority notified the Applicant of the outcome of its review on 14 April 2025, fully upholding its original decision.
5. On 15 April 2025, 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 did not believe that it did not hold the information requested. He also challenged the impartiality of the Authority's review outcome.

## **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 8 May 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 this application and to answer specific questions. These focussed on the searches carried out by the Authority to justify its position that it did not hold the information requested in the parts of the request under consideration here. Comments were also invited from the Authority regarding the Applicant's concern around the impartiality of the reviewer.
9. The Authority provided the submissions requested.
10. The Applicant also provided further comments to the Commissioner during the investigation.

## **Commissioner's analysis and findings**

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

### ***Whether the Authority held the information requested***

12. 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.
13. 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 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.

14. 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. 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 Applicant's submissions*

15. The Commissioner has taken account of the arguments in both the Applicant's requirement for review and in his application, in which he provides reasons as to why he considers the Authority should hold the information requested in the parts of his request under consideration here.
16. In his application to the Commissioner, the Applicant submitted that the Authority's review response raised significant concerns. He argued that its reliance on section 17(1) was not substantiated by any evidence of a robust search referencing the systems, departments or data repositories consulted, and no explanation had been given of the scope of the search, or whether cross-portfolio co-ordination had occurred.
17. In his submissions to the Commissioner, the Applicant was concerned that the Authority's section 17(1) response may not fully reflect the nature or extent of relevant materials, given its involvement in joint policy delivery with the UK Government. Noting that the Authority's review response acknowledged that his concerns had been passed to "relevant policy teams", the Applicant believed this clearly indicated that engagement had taken place internally. In that context, he expected that some form of documentation must exist and the absence of any such records suggested that the scope of the search was either too limited, or that a narrow interpretation of "information held" was being applied.
18. The Applicant believed this mattered because:
- joint programme participation required accountability. As the Authority had publicly co-announced and co-developed the Green Freeports programme alongside the UK Government, he believed it was inconceivable that such strategic activity could proceed without at least some record of oversight discussions, risk assessments, or stakeholder engagement and any such recorded information should be captured under FOISA;
  - in relation to the use of section 17(1) of FOISA, a full description of the search methodology used, and which departments or officials were contacted, would help determine whether the provision had been applied appropriately, and
  - in relation to the public interest in transparency, Freeports had wide-ranging implications for economic policy, labour protections, environmental standards and tax governance. He submitted that public confidence required the mechanisms for oversight and regulation to be subject to scrutiny. In his view, to claim that no such information was held risked undermining public trust in a flagship economic development programme.

### *The Authority's submissions*

19. In its submissions to the Commissioner, the Authority stated that it had applied section 17(1) of FOISA where information was not held. It explained that parts of the Applicant's request had asked for information on work that was not undertaken because it was not within the scope of the Green Freeports programme. Where possible, and in line with the duty to advise and assist set out in section 15 (Duty to provide advice and assistance) of FOISA, it had provided contextual information to help the Applicant understand why the information was not held.
20. The Authority confirmed that it held no information for the parts of the request under consideration here.
21. The Authority explained that it had undertaken a review of the information requested against the scope of the Green Freeports programme which was tightly defined and published on the UK Government's website in the [Bidding Prospectus](#)<sup>1</sup> and the [Set-Up Phase Guidance and Business Case Requirements](#)<sup>2</sup>.
22. The Authority stated that discussion with the UK Government about the programme started in late summer 2020, and the key programme parameters were agreed by March 2022 in the Bidding Prospectus and refined subsequently in the Set-Up Phase Guidance. It further explained that the Green Freeports programme was a joint Scottish-UK Government delivery programme and the Green Freeports themselves were external organisations, not government bodies. As such, any work done by Green Freeports outside of business cases (as described in the Set-Up Phase Guidance) would not normally be held by government.
23. The Authority submitted that the Green Freeports team was a small team, with experience of working on the tightly defined Green Freeports programme for some time (some colleagues had years of experience, including those who were involved at its inception), and with in-depth knowledge of programme activity and associated files. They were therefore able to make informed judgements on the work undertaken since the inception of the programme. As it was apparent that no work had been undertaken on the topics in the parts of the request under consideration here, searches were not required.
24. In addition, the Authority provided details of specialist colleagues who had also been consulted, in order to provide opportunity to verify that no information existed, to review the response for accuracy and to advise if there was any more helpful, contextual information that could be provided to the Applicant.
25. The Authority explained that, with the exception of the information requested in part 3b, the information sought in the other parts of the request under consideration here were not within the scope of the Green Freeports programme. There were therefore no files to search and the information requested was not held. For part 3b, the Authority submitted that this asked about a hypothetical future scenario and no information was held because no work had been carried out on this.

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<sup>1</sup> [Green Freeports in Scotland: bidding prospectus \(delivered in partnership by the Scottish Government and the UK government\) - GOV.UK](#)

<sup>2</sup> [Scottish Green Freeports: set up phase guidance - GOV.UK](#)

26. The Authority confirmed that it had never held, and that there was no expectation for it to hold, the information requested. Extensive guidance and information on the Green Freeports programme, including on its scope and the approach to delivery, was available online as stated above, and this had already been provided to the Applicant. The Authority did not believe that this created any expectation that it would hold the information requested.

*The Commissioner's view*

27. The Commissioner has carefully considered the submissions from both parties, along with the terms of the parts of the request under consideration here, for which the Authority is relying on section 17(1) of FOISA.
28. The Commissioner notes that the Authority has explained that the Green Freeports programme is tightly defined, and that those working on it form a small, highly experienced team with years of experience (including those who were involved at its inception), and who have an in-depth knowledge of programme activity and associated files. As such, he understands that staff are able to make informed decisions on the work undertaken since the programme was set up. He has also taken into account that, in light of this team's knowledge and experience of working on the programme, it was able to determine that no work had been undertaken on any of the topics relating to the parts of the request under consideration here, and therefore no information was held given these matters did not fall within the scope of the Green Freeports programme.
29. The Commissioner has also considered the "belt and braces" approach taken by the Authority in consulting specialist colleagues on the draft response, and to identify whether any further information was held, or whether any further contextual information could be provided to the Applicant. He notes that these further enquiries resulted in no relevant information being identified.
30. Against this, the Commissioner notes that the Applicant believes that the Authority ought to hold information of the nature requested. Having considered the online information referred to by the Authority (in the Bidding Prospectus and the Set-Up Phase Guidance and Business Case Requirements), the Commissioner is unable to identify anything therein which indicates that information of the kind requested by the Applicant would be held by the Authority. The Commissioner can see no reason to believe that, if relevant information was held, the Authority would have failed to acknowledge its existence, particularly in light of the information already made publicly available and the additional contextual information provided in its responses to the Applicant explaining why the information is not held.
31. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the parts of the request under consideration here. He has considered the reasons provided by the Authority which explain why the information requested in these parts of the request is not held.
32. The Commissioner is satisfied that the searches and enquiries described by the Authority would have been capable of identifying any information relevant to the parts of the request under consideration here. The Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of these parts of the request. He finds that the Authority was therefore correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in parts 1a, 2a (for information other than "security and illicit activity"), 2c, 3b, 4b and 5c of the Applicant's request.

### ***The Authority's handling of the request for review***

33. In his application to the Commissioner, the Applicant questioned the impartiality of the Authority's review outcome. He argued that the reviewer was the head of an official function linked to the policy area under scrutiny. In the Applicant's view, the review created a potential conflict of interest and did not meet the test of independence as per section 21 of FOISA.
34. In its submissions to the Commissioner, the Authority explained that the reviewer was a senior civil servant from a different Division (i.e. Entrepreneurship) to the team working on the Green Freeports programme which had handled the initial request. It confirmed that the reviewer had no involvement in original case handling, as recommended in the [Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information \(Scotland\) Regulations 2004](#)<sup>3</sup> (the "Section 60 Code").
35. The Authority stated that its reviewers were never involved in the handling of the initial request, but they may be officials close to the subject matter as this could aid in the understanding of the response. It confirmed that in this case, however, the reviewer worked in a different Division as well as having had no involvement in the handling of the initial request.
36. The Authority explained that advice was provided, via its staff intranet site, to all reviewers on their role and on how to carry out a review, and case specific advice was also provided.
37. In the Authority's view, the review had been undertaken with an appropriate level of independence from the original case handling and had considered all aspects of the case afresh.
38. The Commissioner has considered the submissions from both parties, along with the Authority's initial response and review outcome. He notes that the initial response was signed by the Green Freeports Team, and the review outcome was signed by an official in the Entrepreneurship Division.
39. Section 21 (Review by Scottish public authority) of FOISA sets out the obligations on and the requirements of an authority in relation to the handling of a request for review. However, this does not include any requirement to carry out an impartial review. Notwithstanding this, the Commissioner has considered the guidance in the Section 60 Code which states, at section 10.3.3 of part 2 under "Handling Reviews":

"The aim of the review is to allow the authority to take a fresh look at its response to an information request, to confirm the decision (with or without modifications) or, if appropriate, to substitute a different decision. The review procedure must therefore be fair and impartial and allow decision makers to look at the request afresh."

Section 10.3.4 of the same part goes on to state:

"It is good practice for the reviewer to be a person who did not respond to or advise on the original request (where possible or practicable)."

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

40. In light of all of the above, the Commissioner can see no reason to consider the Authority's handling of the Applicant's request for review as anything other than impartial. He can see no evidence of any conflict of interest, as claimed by the Applicant. In this respect, therefore, and while not being a finding in terms of FOISA, the Commissioner is satisfied that the Authority complied with the Section 60 Code in its handling of the Applicant's request for review.

## **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.

**Jill Walker**  
**Deputy Head of Enforcement**

**8 January 2026**

## **Appendix 1: Full text of parts of Applicant's request dated 7 March 2025 under consideration in this Decision Notice**

[Namely parts 1a, 2a (for information other than "security and illicit activity"), 2c, 3b, 4b and 5c.]

"I acknowledge receipt of your response (Ref: 202400446437) regarding Green Freeports in Scotland. However, your reply systematically avoids providing direct answers to key questions, instead deflecting with general references to external documents, policy frameworks, and previously issued statements. This approach is unacceptable given the significant economic, legal, and social consequences of Freeports for Scotland.

I must now ask plainly: What are you hiding? Why are you not answering the direct questions I originally sent?

Given the [Authority's] stated commitment to transparency and accountability, I request an unambiguous, detailed response to the following critical issues:

### 1. Local Communities: Displacement, Land Use & Cost of Living

Your response fails to confirm whether assessments have been conducted on potential displacement, land use changes, or rising living costs for residents affected by Freeports.

Specific Questions:

- Has the [Authority] conducted any formal risk assessments on the impact of Freeports on local housing, small businesses, and cost of living? If so, provide copies. [Part 1a]

If no such assessments have been conducted, confirm this explicitly in writing.

### 2. Oversight & Regulatory Integrity: Avoiding Legal Loopholes

While you state that Freeports must comply with existing Scottish laws, this does not address how compliance will be monitored and enforced in practice.

Specific Questions:

- What additional enforcement measures will be put in place to prevent regulatory arbitrage, tax avoidance, or illicit activities within Freeports? [Part 2a]

...

- What specific penalties will be applied to Freeport businesses that violate employment, environmental, or financial regulations? [Part 2c]

A generic statement that "Scottish law applies" does not address these concerns—provide concrete details on enforcement mechanisms.

### 3. Governance & Transparency: Who is Really in Control?

Your response asserts that governance structures will be reported to Parliament, yet it lacks clarity on how decisions will be made and by whom.

Specific Questions:

...



- What specific mechanisms will be used to prevent conflicts of interest between public officials and private Freeport operators? [Part 3b]

...

If governance mechanisms are still undecided or not in place, confirm this directly.

#### 4. Financial Risks & Investor-State Dispute Settlement (ISDS) Exposure

Your response completely ignores concerns regarding Scotland's financial exposure to corporate disputes, investor claims, and potential arbitration liabilities.

Specific Questions:

...

- Has the [Authority] conducted any risk assessment on the potential for Freeports to be used for corporate tax avoidance or profit-shifting? If so, provide details. [Part 4b]

...

If no ISDS risk assessment has been conducted, confirm this clearly.

#### 5. Environmental & Worker Protections: Real or Just Rhetoric?

Your response references Fair Work Charters and Environmental Impact Assessments (EIA) but does not confirm whether these will be legally binding or corporate-led.

Specific Questions:

...

- What specific mechanisms will ensure that businesses cannot opt out of national labor, tax, or safety regulations? [Part 5c]

#### Final Notice: Full Transparency Required

Under the Freedom of Information (Scotland) Act 2002 (FOISA), I formally request a clear and complete response to all the above points.

- Links to policy documents are not acceptable as substitutes for direct answers. If a link is provided, you must explain exactly how the content within it answers the specific question.
- If you refuse to provide requested information, state the exact legal exemption being applied and the justification for withholding it.
- Under Section 10(1) of FOISA, you are required to respond within 20 working days. Failure to do so will result in a formal escalation to the Information Commissioner's Office (ICO) and, if necessary, the Scottish Parliament's Public Audit Committee.

The deliberate avoidance of these questions raises serious concerns about what the [Authority] is not telling the public. I expect a full and transparent response."

[End]