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# Decision Notice 290/2025

## Job evaluation process

Applicant: The Applicant

Authority: Langstane Housing Association Ltd

Case Ref: 202500593

## Summary

The Applicant asked the Authority for information about its job evaluation process. The Authority withheld the information on the basis that it was commercially confidential. During the investigation, the Authority changed its position for certain of the information requested concerning training materials, now stating that it did not hold that information.

The Commissioner investigated and found that the Authority had not been entitled to withhold any of the information requested under the exemption claimed. For the training materials, he required the Authority to carry out a fresh review and issue a revised review outcome. For the remainder of the information requested, he required the Authority to disclose it to the Applicant.

## Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002 \(FOISA\)](#)<sup>1</sup> sections 1(1), (2), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 17(1) (Notice that information is not held); 21(4) and (5) (Review by Scottish public authority); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner).

## Background

1. On 17 February 2025, the Applicant made a multi-part request for information to the Authority seeking information about its job evaluation process. Only certain of the information

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

requested in part 5 of the Applicant's request forms the basis of his application to the Commissioner. In part 5 of his request, the Applicant asked for the following information:

"Please provide all information (both current and superseded) that [the Authority] holds on ... scoring methodology ..., including but not limited to grade band ranges, ... levels and weightings, ... scoring matrices, ... training materials."

2. The Authority responded on 12 March 2025. The Authority refused to provide the information on levels and weightings, scoring matrices and training materials under section 33(1)(b) of FOISA, on the basis that disclosure would compromise the job evaluation process in respect of the evaluation of roles in promotion and recruitment, and would give an unfair advantage to anyone having sight of that information. The Authority considered the public interest lay in maintaining the exemption.
3. On 20 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 believe the exemption applied. The Applicant provided arguments in support of his view that:
  - the information did not relate to the Authority's commercial trading activities;
  - the suggested link between disclosure and harm was hypothetical: in his view, disclosure of the information would provide a level playing field, as opposed to giving unfair advantage to certain individuals (which, he believed, was already the case), and
  - strong control mechanisms were already in place for reviewing job evaluation templates.
4. The Authority notified the Applicant of the outcome of its review on 14 April 2025 fully upholding its original decision with further explanation. The Authority considered that maintaining the confidentiality of the information was necessary to apply the evaluation and recruitment process effectively. It believed disclosure would compromise this by allowing potential applicants to "game" the recruitment process, thereby jeopardising its ability to hire the best talent. The Authority also believed that disclosing information on scoring matrices and guidelines would provide unfair advantage to certain individuals when roles were being evaluated, thereby eroding the effectiveness of the job evaluation process and adversely impacting the Authority's ability to operate effectively and competitively as a commercial organisation. The Authority upheld its position that the public interest lay in maintaining the exemption.
5. That same date, the Applicant queried the Authority's review outcome on the basis that it had only provided a partial response to part 5 of his request.
6. The Authority responded on 15 April 2025, confirming that its response regarding information on scoring matrices (including methodology) and levels and weighting (including grade band ranges) was included in its refusal notice.
7. On 21 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 agree that the exemption in section 33(1)(b) applied. In his view, the explanations provided by the Authority did not constitute a valid basis for refusing to disclose the information.

## **Investigation**

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 15 May 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and, in doing so, it informed the Commissioner that it held no training materials. The case was subsequently allocated to an investigating officer.
10. 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 focused on the Authority's justification for withholding the information requested under the exemption in section 33(1)(b) of FOISA, and on the searches carried out to ascertain whether it held any training materials.
11. The Applicant was also invited to submit any comments he wished to make on the public interest in disclosure of the information.
12. Both parties provided submissions to the Commissioner during the investigation.

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

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

### ***The Authority's change of position regarding information on training materials***

14. As rehearsed above, at review stage, the Authority upheld its initial decision to withhold the training materials requested under the exemption in section 33(1)(b) of FOISA. However, during the investigation, the Authority changed its position and informed the Commissioner that it did not hold this information.
15. The Authority acknowledged that its review outcome should have cited section 17(1) of FOISA, which requires an authority, when receiving a request for information that it does not hold, to give the applicant notice in writing to that effect. The Authority regretted that this was clearly not set out at that time.
16. The Authority understood that the training had been provided by an external company (i.e. the original evaluators), stating that it had been unable to locate any formal training documentation.
17. The Authority explained, and provided evidence of, the searches carried out by its HR Manager. This covered searches of the Authority's HR and public network folders using the following keywords – “[name of consultants employed to support the job evaluation project]”, “training”, “job evaluation”, “JET”, “panel” and “JE”: The Authority confirmed, however, that no training materials were located.
18. The Authority submitted that its HR Manager recalled that any training conducted by the consultants employed to support the job evaluation project may have involved a PowerPoint-style presentation; however, no such material appeared to have been retained. It confirmed that its former HR Manager, who was in post at that time, was no longer employed by the

Authority and her email account was no longer active - as such, the Authority was unable to verify whether any information had been shared with her. It further submitted that its former Director of Housing also confirmed limited recollection of the format of the training and no record of training materials. The Authority explained that it was unable to contact the consultants directly to request the training materials, as the company had ceased trading.

19. In conclusion, the Authority confirmed that it held no information in respect of this element of the Applicant's request and therefore now wished to rely on section 17(1) of FOISA.
20. The Commissioner has considered the Authority's change of position along with the explanation of searches for the information requested. In light of this, he has no option but to find that the Authority was not entitled to rely on section 33(1)(b) of FOISA at review stage to withhold the information requested concerning training materials, given the Authority's claim now that the information was not held at that time.
21. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect. In this case, and as acknowledged by the Authority, the Authority's review outcome did not provide the Applicant with such notice in respect of that element of his request concerning training materials.
22. In this respect, therefore, the Commissioner must find that the Authority's review outcome failed to meet the notice requirements set out in section 21(4) and (5) of FOISA. These provide that the review outcome must inform the requester what steps the public authority has taken (i.e. confirm its original decision; substitute a different decision, or reach a decision where no decision had been reached) (section 21(4)), and why it has taken these steps (section 21(5)).
23. The Commissioner therefore requires the Authority to carry out a fresh review for the part of the Applicant's request seeking training materials, and to issue an FOI-compliant revised review outcome in respect of that part of his request.

***Section 33(1)(b) – Commercial interests and the economy (for the remainder of the information under consideration)***

24. Section 33(1)(b) of FOISA provides that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority). This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
25. There are a number of elements an authority needs to demonstrate are present when relying on this exemption. In particular, it needs to establish:
  - (i) whose commercial interests would (or would be likely to) be harmed by disclosure;
  - (ii) the nature of those commercial interests, and
  - (iii) how those interests would (or would be likely to) be prejudiced substantially by disclosure.
26. The prejudice must be substantial, in other words of real and demonstrable significance. Where the authority considers that the commercial interests of a third party would (or would be likely to) be harmed, it must make this clear. Generally, while the final decision on disclosure will always be one for the authority, it will assist matters if the third party has been consulted on the elements referred to above.

27. In its submissions to the Commissioner, the Authority confirmed that it wished to maintain reliance on section 33(1)(b) to withhold the information requested.

*Commercial interests and how disclosure would prejudice these*

28. In his application to the Commissioner, the Applicant was dissatisfied with the explanations provided in the Authority's review outcome on the basis that they did not constitute a valid basis for refusing to disclose the information requested. As stated in his request for review, the Applicant did not believe that the information related to the Authority's commercial trading activities. He argued that, as a housing association, its commercial interests were in the area of housing provision, not human resources, and it seemed a stretch to suggest that disclosure of the job scoring criteria requested would be likely to cause substantial harm to its housing provision activities.
29. In its submissions to the Commissioner, the Authority confirmed that it was not relying on any third-party commercial interests in this case as the company that had assisted in the development of the job evaluation materials had ceased trading.
30. However, the Authority stated that it was aware that other housing associations operated similar job evaluation schemes devised by the same company. It therefore believed disclosure of its own scheme could indirectly reveal sensitive elements of shared methodologies, potentially impacting those other organisations that relied on this proprietary framework. In the Authority's view, while the commercial interests at risk were primarily its own, disclosure of the full scheme risked wider prejudice by affecting the commercial interests and operational integrity of other housing associations using the same or similar schemes.
31. The Authority confirmed that its reliance on section 33(1)(b) was based exclusively on the potential harm to its own commercial interests, particularly the integrity, fairness and neutrality of its internal pay structures and evaluation framework.
32. The Authority submitted that the job evaluation framework was essential to its ability to allocate fair and consistent pay across the organisation. In its view, disclosure of the information requested would:
  - enable individuals to reverse engineer job descriptions or appeals to artificially attain higher grades or pay bands;
  - undermine the integrity and objectivity of the evaluation process by creating opportunities for manipulation;
  - create an unfair advantage for certain employees, affecting the overall fairness and perceived impartiality of the process, and
  - expose the Authority to significant financial and legal risks, particularly in relation to equal pay claims and employment disputes.
33. The Authority argued that any such prejudice could lead to grievances or formal claims under the Equality Act 2010, resulting in reputational damage and financial costs. To protect these commercial interests and ensure continued fairness and consistency, the Authority believed it was necessary to withhold the information requested.
34. The Authority submitted that, precisely to avoid the risk of engineered outcomes, even its Leadership Team did not have access to the scoring matrix or weightings, with such information being deliberately and carefully protected to avoid that type of harm.

### *The Commissioner's views*

35. The Commissioner has fully considered the submissions from both parties. The first matter he must decide is whether the interests described are commercial interests for the purpose of section 33(1)(b). If he is satisfied that these interests are commercial, he must then decide whether those interests would, or would be likely to, be harmed by disclosure of the information requested.
36. The Commissioner acknowledges that the Authority is not relying on any third party commercial interests in relation to the company involved in developing the job evaluation materials, given that the company has now ceased trading.
37. In respect of the Authority's arguments regarding other housing associations that may utilise similar job evaluation schemes, the Commissioner notes that these organisations are not parties in this appeal, and he has been provided with no evidence in relation to any commercial interests these organisations may have in relation to disclosure of the withheld information. As such, the Commissioner is unable to give meaningful consideration to those arguments.
38. The Commissioner notes, however, that the Authority has confirmed that its reliance on section 33(1)(b) was based exclusively on harm to its own commercial interests.
39. In his briefing on section 33(1)(b) of FOISA<sup>2</sup>, at paragraph 19, the Commissioner notes that: 

“Commercial interests” is not defined in FOISA. These are not the same as financial interests. A person’s or organisation’s commercial interests will usually relate to the commercial trading activity they undertake, e.g. the ongoing sale and purchase of goods and services, commonly for the purpose of revenue generation. Such activity will normally take place within a competitive environment.”
40. While the Commissioner’s briefing (at paragraph 20) does recognise that there may be cases where prejudice to a person’s financial interests may affect their commercial interests, he is not persuaded that this is the case here, particularly with regard to the information being withheld which, in the Commissioner’s view, does not relate to, or impact on, any commercial activity.
41. In the Commissioner’s view, the interests put forward by the Authority (described as the “integrity, fairness and neutrality of its internal pay structures and evaluation framework”) are mainly operational and financial, relating to its core functions in providing, for the most part, services that are public in nature. He is not satisfied that the Authority has demonstrated that the interests identified are commercial interests for the purposes of the exemption in section 33(1)(b) of FOISA.
42. The Commissioner therefore cannot accept that the Authority has identified commercial interests relating to itself, which might be adversely impacted through disclosure of the information requested in this case.
43. The Commissioner therefore finds that the exemption in section 33(1)(b) is not engaged in this case, and that the Authority wrongly withheld the information requested under that exemption. In light of this finding, the Commissioner is not required to go on to consider the harm in disclosure of the information being withheld under section 33(1)(b), or where the

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<sup>2</sup> <https://www.foi.scot/foisa-exemptions>

balance of public interest lies in disclosure of that information as set out in section 2(1)(b) of FOISA.

44. The Commissioner therefore requires the Authority to fully disclose the information requested to the Applicant.

## **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.

He finds that, in respect of the training materials requested, the Authority failed to carry out a review which met the requirements of section 21(4) and (5) of FOISA.

He further finds that the Authority failed to comply with section 1(1) of FOISA, by wrongly withholding all of the information requested under the exemption in section 33(1)(b) of FOISA.

The Commissioner therefore requires the Authority to carry out a fresh review for the training materials, and to issue an FOI-compliant revised review outcome to the Applicant in respect of that information. He also requires the Authority to disclose to the Applicant the remainder of the information requested, which he has found to have been wrongly withheld under section 33(1)(b) of FOISA.

The Commissioner requires the Authority to take these steps by **26 January 2026**.

## **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**

**10 December 2025**