



Scottish Information  
Commissioner  
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# Decision Notice 297/2025

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## School roll projections

Authority: Midlothian Council  
Case Ref: 202500850

### Summary

The Applicant asked the Authority for information about school roll projections. The Authority refused to provide the information because it considered it to be commercially sensitive. The Commissioner did not accept that the Authority was entitled to withhold the information, and he required it to be disclosed to the Applicant.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 16 January 2025, the Applicant made a request for information to the Authority. They asked:
  - (i) “Whether Midlothian Council has produced updated School Roll Projections as scheduled.
  - (ii) When these projections are available, when and how they will be released to Community Councils.
  - (iii) If these projections are not to be made available to Community Councils please explain why not.”

2. The Authority responded on 13 February 2025. In response to request (i) it answered yes; in response to request (ii) it stated that the information would not be made available; and in response to request (iii) it stated that disclosure of the information would prejudice substantially the commercial interests of the Authority and it withheld the requested information under the exemption in section 33(1)(b) of FOISA.
3. On 3 March 2025, the Applicant wrote to the Authority requesting a review of its decision. In particular, the Applicant stated that they wanted the Authority to reconsider its decision to withhold the information. The Applicant also wanted a clearer explanation of the specific commercial risks that would arise from disclosure.
4. The Authority notified the Applicant of the outcome of its review on 2 April 2025 which fully upheld its original decision. The Authority maintained that its commercial interests would be substantially prejudiced by disclosure of the requested information and stated that the public interest in openness and transparency was outweighed by the risk to the Authority in not securing best value. Moreover, it argued that it was not aware of any particular public interest in the subject matter of the request.
5. On 27 May 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review because they believed the reason cited for withholding the information was unacceptable. They stated that other local authorities in Scotland (including a neighbouring authority) made school roll projections public and they believed people in Midlothian also had the right to access their school roll projections.

## **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 1 July 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 the case was 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 related to why the Authority believed disclosure of the information would prejudice its commercial interests.

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

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

### ***Section 33(1)(b) – Commercial interests and the economy***

10. Section 33(1)(b) of FOISA provides that information is exempt information if its disclosure 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.

11. There are several elements a Scottish public authority needs to demonstrate are present when relying on this exemption. 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.
12. 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.

### ***The Authority's comments on the exemption***

13. The Authority stated that it considered disclosure of the datasets would result in substantial prejudice to its own commercial interests in relation to ongoing negotiations with housing developers in the Gorebridge area regarding the need for education provision.
14. The Authority argued that disclosure could reveal pricing structures, negotiation strategies, or other sensitive details which would disadvantage the Authority or its partners in future negotiations.
15. Furthermore, the Authority claimed that disclosure could cause competitive harm by unfairly benefiting competitors and undermining its ability to secure best value. It also argued that reputational risk could arise from disclosure of sensitive commercial information which could damage relationships with suppliers and affect future service delivery.
16. The Authority stated that school roll projections and census data were central to assisting it with strategic planning and investment in education infrastructure, as part of the wider learning estate strategy.
17. It argued that the datasets informed commercially sensitive decisions, including negotiations with developers, contractors, and funding bodies. The Authority argued that disclosure could reveal strategic planning assumptions or projected demand that might influence land values, developer contributions, procurement strategies, and other related factors.
18. The Authority argued that this was particularly relevant where Section 75 agreements [agreements under the [Town and Country Planning \(Scotland\) Act 1997](https://www.legislation.gov.uk/ukpga/1997/8/section/75)<sup>1</sup> which can, for example, allow an authority to require a landowner to make a financial contribution towards, for example, extra school capacity which would be required as a result of housing development proposals] remained under negotiation and were not finalised or locked down.
19. It stated that the information was considered confidential and commercially restricted until such agreements were formally signed and that premature disclosure could result in competitive harm, undermining the Authority's ability to secure best value in future negotiations.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1997/8/section/75>

20. Additionally, the Authority stated that disclosure might lead to reputational risk, particularly if projections were misinterpreted or taken out of context, potentially affecting relationships with key partners and stakeholders.
21. It stated that disclosure could cause potential harm to its commercial interests and ability to deliver efficient and cost-effective services. The Authority explained that school roll projections and census data were integral to strategic planning and were regularly updated to ensure accuracy.
22. The Authority explained that it was in negotiations with developers regarding housing sites in the Gorebridge area and that the developers were challenging, among other things, their contributions for education provision. Given this, the Authority's position was that the specific school roll projections sought remained commercially sensitive.

*The Commissioner's view about the exception*

23. The Commissioner has carefully considered all the arguments submitted by the Applicant and the Authority, along with the withheld information.
24. "Commercial interests" are not defined in FOISA, [but the Commissioner's guidance on the exemption in section 33\(1\)\(b\)](#)<sup>2</sup> states that an organisation's commercial interests will usually (but not always) relate to the commercial trading activity they undertake.
25. In order to rely on this exemption, an authority must also evidence why disclosure would, or would be likely to, substantially prejudice the commercial interests of any person (including its own commercial interests).
26. The Commissioner accepts that, while the commercial interests of public authorities may differ from those of a private company, those commercial interests do exist for public authorities, including this one. For example, the Commissioner's guidance refers to how information about the level at which Council Tax is to be set will affect the financial interests of a local authority, although that information does not relate to any commercial activity.
27. Furthermore, he considers that a public authority's commercial interest will include the purchase of goods and services, for example, in terms of securing the best value possible for the money it spends and the services that it provides. This would include, for example, buying in services from providers and could also include maximising income where possible.
28. The Commissioner acknowledges that the Authority controls a significant budget<sup>3</sup> and he notes the importance of ensuring public money is well spent, and that local authorities' commercial interests are not put at risk in relation to this.
29. The Commissioner also acknowledges the importance of school roll projections in forward planning in terms of education delivery and infrastructure, both at individual school level and more widely, and also in terms of community services.
30. However, while the Authority has referenced substantial prejudice to its commercial interests, the Commissioner does not consider that it has properly detailed or explained the specific prejudice which it believes would result from the disclosure of the withheld information. Nor has it detailed or explained exactly how or why it believes this harm would occur.

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<sup>2</sup> <https://www.foi.scot/sites/default/files/2023-06/BriefingSection33CommercialInterestsandtheEconomy.pdf>

<sup>3</sup> [https://www.midlothian.gov.uk/news/article/3861/council\\_sets\\_balanced\\_budget\\_and\\_council\\_tax\\_rates](https://www.midlothian.gov.uk/news/article/3861/council_sets_balanced_budget_and_council_tax_rates)

31. For example, the Commissioner is struggling to understand how, on the basis of the submissions provided, section 75 negotiations would be prejudiced by the disclosure of figures which, presumably, already form at least part of the basis for those discussions with developers. The Authority has stated that some developers are challenging developer contributions for education provision, but it has not explained why or how disclosure of the projected rolls would negatively impact on these discussions.
32. Furthermore, he cannot see (from the submissions provided) how pricing structures, negotiation strategies, or other sensitive details (as referred to by the Authority) could be impacted when there is no reference whatsoever to pricing structures or negotiation strategies in the withheld information, and when the "other sensitive details" remain undefined and unexplained.
33. In addition, the Commissioner is unclear about which competitors would benefit from the disclosure of the information and how disclosure would affect its ability to secure best value.
34. In relation to the Authority's reference to reputational risk (particularly if projections were misinterpreted or taken out of context, and how this could affect key relationships) the Commissioner considers that insufficient information has been provided about the Authority's thinking on this matter. In his view, the Authority has not provided specific details about the type of third parties it was referring to (whether developers, or other bodies or groups), what sort of misinterpretation it envisaged and exactly how these relationships would be affected.
35. Furthermore, the Commissioner notes that an authority can provide whatever additional contextual information it deems necessary so that disclosed information can be properly understood (and he considers that doing so is good practice, particularly where an Authority has identified a particular risk of misinterpretation or where it considered that the information was in some way confusing). However, in this case the Authority did not specify the misinterpretation it had in mind, and the Commissioner finds it difficult to discern what that might be.
36. Taking account of the submissions received from the Authority in relation to the particular information being withheld in this case, the Commissioner believes he has no option but to find that the Authority has not evidenced the required substantial prejudice for section 33(1)(b) of FOISA to be engaged.
37. The Commissioner would note that it is for the Authority to provide the required evidence of harm, not for him to go out and find it, or to make the case on behalf of the Authority. Consequently, in this case, the Commissioner is not satisfied that the information requested was properly withheld under this exemption. Having reached that conclusion, the Commissioner is not required to consider the public interest test in section 2(1)(b) of FOISA.
38. The Commissioner requires the Authority to disclose the withheld information to the Applicant, by the date stated below.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 (and, in particular, section 1(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 the exemption in section 33(1)(b) of FOISA to withhold information from the Applicant.

The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant, 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.

**David Hamilton**

**Scottish Information Commissioner**

**11 December 2025**