



Scottish Information
Commissioner
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Decision Notice 043/2026

Signed Collective Agreements

Authority: Aberdeen City Council

Case Ref: 202501139

Summary

The Applicant asked the Authority for specific information related to the Authority's decision to move to a 35 hour working week (for full time employees). The Authority initially withheld the information because it considered it to be confidential but later changed its view and disclosed the information.

The Commissioner investigated and found that the Authority was wrong to have originally withheld the information on the grounds that it was legally privileged, but he did not require it to take any action as the information had since been disclosed.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 10(1) (Time for compliance); 36(2) (Confidentiality); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 13 June 2025, the Applicant made a request for information to the Authority. She asked for the signed Collective Agreements between the Authority and its recognised trade unions in relation to the 35 hour working week.
2. The Authority did not respond to the request.

3. On 12 July 2025, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 14 July 2025. The Authority refused to disclose the information requested and explained that it was withholding all of the information under section 36(2) of FOISA.
5. On 14 July 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Authority's review because she disagreed that the exemption applied and considered that the public interest lay in disclosure of the information.

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 14 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 the information captured by the request and its reasons for withholding that information.

Commissioner's analysis and findings

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

The Authority's change of position

10. During the investigation, the Authority changed its position in relation to the information being withheld. The Authority noted that the Collective Agreements which were the subject of the request had been made available on the Authority's internal website as part of the terms and conditions of employment for those staff affected by the change to the working week. As a result of this internal publication, the Authority recognised that the section 36(2) exemption was no longer applicable and, on 23 December 2025, the Authority disclosed the information to the Applicant.
11. While the Authority acknowledged that, by December 2025, section 36(2) of FOISA was no longer applicable, it submitted that had it been able to carry out a substantive review in July 2025 (rather than carrying out a review based on its initial failure to respond to the request), it was likely that it would have handled the review differently and it may have overturned the application of section 36(2) of FOISA at that stage. The Authority raised the possibility of applying an alternative exemption such as section 27(1) of FOISA because its intention would have been to publish the information.

12. In order to determine whether a Scottish public authority has complied with the requirements of FOISA, the Commissioner must examine that authority's position at the time the review is carried out.
13. In this particular case, the Authority has not provided the Commissioner with any submissions to confirm its position at review in relation to section 36(2), beyond commenting that it was possible it may have overturned the exemption had it carried out a full review of the substantive matters following the Applicant's requirement for review.
14. In these circumstances, the Commissioner is unable to consider whether section 36(2) of FOISA was properly applied by the Authority in its review outcome. In the absence of any submissions from the Authority to the contrary, he must determine that it was not. The Commissioner, therefore, finds that in incorrectly withholding the information requested under section 36(2), the Authority failed to comply with section 1(1) of FOISA.

Information captured by the request

15. Following the Authority's release of information on 23 December 2025, the Applicant submitted that the disclosure appeared to be a partial disclosure of the information captured by her request. She accepted that the Collective Agreements that had been disclosed appeared to cover the introduction of the 35 hour working week, but she commented that significantly more would have been agreed as part of the overall agreement for the introduction of the 35 hour week.
16. The Applicant explained that the Authority had agreed, alongside the recognised trade unions, to make a buy-out payment to every full time employee of the two hours reduction from 37 hours to 35 hours. She submitted that the disclosed documents did not cover that aspect of the agreement or the many other conditions. She considered it unlikely that such matters would have been agreed verbally and stated her view that there would be additional collective agreements covering these matters, or perhaps side agreements or similar.
17. The Authority contended that the Applicant had asked for the Collective Agreements in her request and had not asked for anything else. It commented that it was reluctant to go beyond the scope of the request, given the specific terms of the request made by the Applicant. The Authority considered the Applicant's comments (that her request should have encompassed additional information) to be inaccurate, given the terms of her request.
18. The Authority stated that it was content it had identified all of the information it held that was captured by the request.
19. The Authority submitted that the request had asked for copies of the Collective Agreements and that these had been provided to the Applicant. The Authority noted that it did hold "implementation agreements" but it did not consider these to fall within the scope of the request. It commented that the Applicant had not asked for the implementation agreements, instead she had requested the signed Collective Agreements. It noted that it had shared the implementation agreements with the Commissioner in error and reiterated its view that it did not consider the implementation agreements to fall within the scope of the request.
20. The Applicant argued that she could not be expected to know the exact naming convention or terms used by the Authority or its trade unions in describing the agreements reached or that different agreements might be split into separate documents. She considered that the important point was that there was an agreement or agreements between the named parties and they related to the 35-hour working week.

It was her view that the request covered all relevant agreement(s) related to the subject matter of the request and she submitted evidence to support her view.

21. The Applicant argued that any interpretation of the request should be agnostic as to the naming convention for agreements and should instead look to the substance of the agreement(s).
22. The Authority acknowledged the expectation under section 5.3 of the Scottish Ministers' Code of Practice on the [Discharge of Functions by Scottish Public Authorities under the Freedom of Information \(Scotland\) Act 2002 and the Environmental Information \(Scotland\) Regulations 2004](#)¹ (the Section 60 Code) that authorities should provide advice and assistance to enable applicants to clearly describe the information they require. However, the Authority maintained that the Applicant's request was clear. It was the Authority's view that the Applicant could have made a less specific, broader request had she intended it to encompass any other additional information which led to the collective agreements.
23. The Authority submitted that it had received a considerable amount of FOI requests, requirements for review, and appeals from the Applicant, and, in the past, she had evidenced an in-depth knowledge of the Authority and specific, detailed, knowledge of the process followed during the 35 working week consultation. Given this, it considered that it was reasonable for it to assume she would be able to ask clearly for the information she was looking for.

The Commissioner's view

24. The Commissioner has considered the wording of the Applicant's request carefully alongside the submissions from both parties. The request asked for "the signed Collective Agreements between the Authority and its recognised trade unions...". The Commissioner has carefully considered what the expectation of the Authority would have been when receiving this request in terms of the information sought.
25. The Commissioner is satisfied that the terms of the request are clear; there is limited scope for incorrect interpretation.
26. The Commissioner has also carefully considered the Applicant's comments. It is evident that the Applicant considers that there are other agreements or related information that led to the creation of the collective agreements. However, if this is her view (and it is clear that it is), the Commissioner considers that the Applicant should have framed her request to have included this information.
27. The Commissioner is satisfied that the Authority interpreted the Applicant's request in a reasonable way. The Applicant herself capitalised the term "Collective Agreements" which strongly suggests that she was not just seeking any kind of signed agreement, but those of a specific type which were named in a specific way. Given this, he cannot see why any authority would take an alternative, broader interpretation of such a clear and specific request.
28. The Commissioner agrees that the Applicant cannot be expected to know how an authority names or describes the information it holds.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

As the Authority notes, the Section 60 Code requires that authorities offer assistance to Applicants to help them describe the information they require. However, in this case, the Applicant made a succinct request for the signed "Collective Agreements". The Commissioner considers that it would be highly unlikely that any other authority would have interpreted her request differently or more broadly, and, as such, it is unreasonable to expect the Authority in this case to do so.

29. In all the circumstances of the case, the Commissioner is satisfied that the Authority has interpreted the request correctly.

Timescales

30. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
31. In her application to the Commissioner, the Applicant raised her dissatisfaction that the Authority had failed to provide an initial response to her request.
32. The Authority acknowledged that it had failed to respond to the request within the statutory 20 working period. It explained that this was primarily due to the significant volume of information requests received during the relevant period, which had placed considerable pressure on its Access to Information Team and the relevant service's capacity to process and respond to each request promptly. The Authority submitted that, given the confidential and sensitive nature of the requested information, there were only a very small number of senior officers who were able to fully consider, respond and sign off on the large volume of requests and some of these senior officers were unavailable due to leave or other work commitments at that time. This had inevitably led to extended response times at that time.
33. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days. The Commissioner, therefore, must find that the Authority failed to comply with section 10(1) of FOISA in this respect.

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.

By failing to respond to the Applicant's request within the timescale laid down by section 10(1) and by incorrectly withholding information under section 36(2), the Authority failed to comply with section 1(1) of FOISA.

Given that the Authority has now disclosed the information, the Commissioner does not require the Authority to take any action in response to these failures.

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.

Euan McCulloch
Head of Enforcement

11 March 2026