



Scottish Information
Commissioner
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Decision Notice 143/2026

Burial lair records

Applicant: The Applicant
Authority: West Lothian Council
Case Ref: 202600063

Summary

The Applicant asked the Authority for information about burial lair records. The Authority refused to provide the information requested on the basis that it was otherwise accessible to the Applicant via various sources. The Commissioner investigated and found that the information requested was not otherwise accessible to the Applicant. He required the Authority to issue the Applicant with a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 3 January 2025, the Applicant made a request for information to the Authority. He asked for an extract from the burials database in excel, to include but not limited to the following information:
 - Name of deceased
 - Gender
 - Age at death

- Date of birth if known
 - Date of death
 - Date of interment
 - Burial ground name
 - Section and lair number
 - Address of deceased
 - Any other information held on the deceased
2. The Authority responded on 9 January 2025. It informed the Applicant that the information requested was exempt from disclosure under section 25(1) of FOISA, on the basis that it was otherwise accessible to him, and explained why.
 3. On 9 January 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied that the Authority had not provided him with the information he had requested under FOISA.
 4. The Applicant did not receive a response to his requirement for review.
 5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 6. The above application resulted in the Commissioner issuing [Decision 272/2025](#)¹, which found that the Authority failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA and required the Authority to issue a review outcome.
 7. The Authority notified the Applicant of the outcome of its review on 22 December 2025, which broadly upheld the Authority's original decision and suggested different avenues that the Applicant could pursue to access some of the information requested. However, the review outcome issued the Applicant with a notice, in terms of section 17(1) of FOISA, in response to the last element of his request ("Any other information held on the deceased").
 8. On 11 January 2026, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review because he did not consider the information to be otherwise accessible to him and explained why.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 3 February 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.

¹ <https://www.foi.scot/decision-2722025>

11. 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 it considered the information was otherwise accessible to the Applicant.
12. As part of his application, the Applicant confirmed that he did not require a decision notice from the Commissioner in respect of the final two elements of his request (i.e. the "Address of the deceased" and "Any other information held on the deceased").

Commissioner's analysis and findings

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

Section 25(1) – Information otherwise accessible

14. Information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA.
15. Section 25(1) of FOISA is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.

The Applicant's submissions

16. The Applicant disagreed that the information requested was otherwise accessible to him.
17. The Applicant commented that the only source of the burial place, lair numbers and burial ground was the authority that interred the deceased. Despite many of the deceased having headstones, he noted that there were a large number of unmarked graves and that only the authority that interred the deceased would hold the details and the whereabouts of these graves.
18. While he acknowledged the advice the Authority had provided to him and the information it had previously disclosed to him, the Applicant did not consider that these provided all the information requested. He noted, for example, that the burial ground and lair plans he had previously received were out of date as hundreds of new graves had since been added.
19. In addition, the Applicant commented on the time and cost that he would have to incur to obtain all the information requested. He estimated this would take hundreds of journeys spread over some years, totalling many thousands of hours.
20. [redacted]

The Authority's submissions

21. In its initial response, the Authority advised the Applicant that cemeteries are public places and that the details of those interred, dates of birth and death are visible on headstones. Alternatively, it said that the Register of Births, Deaths and Marriages was available for research purposes and that dates of interment and lair numbers could be obtained on an individual basis from the National Records of Scotland (NRS).
22. In its review outcome, the Authority again advised the Applicant that cemeteries were public places and that memorial stones recorded the name, date of birth (generally) and date of

death. It said that this allowed the calculation of the deceased's age where this was not included on the memorial stone, whilst the name would disclose either biological sex or gender identifier.

23. The Authority added that name, biological sex, date of birth, date of death, age and date of interment were also available via the Registrar of Births, Deaths and Marriages, where information could be requested regarding deceased individuals.
24. The Authority noted that the burial ground name would be obvious from the cemetery attended. It also commented that the Applicant had (in response to a separate FOI request) been provided with plans and lair details for all its cemeteries and assistance as to securing information relative to churchyard burials. On that basis, it considered that he already held details of burial grounds, sections and lair numbers.
25. In its submissions to the Commissioner, the Authority commented that as cemeteries are public places, burial place, lair number, section and burial ground could all be identified following reasonable inquiry by the Applicant. It noted that if he had questions about specific lairs that could not be addressed by his own investigation, then the Applicant may choose to ask the Authority for assistance.
26. The Authority considered that the advice it had given to the Applicant and the links it had provided were "illustrative of potential sources of information". By providing this advice and these links, it considered that it had fulfilled its duty to provide the Applicant with reasonable advice and assistance.
27. The Authority commented that there was no indication that the Applicant had limitations in his ability to pursue his own inquiries and identify other potential sources of information. It said it was therefore reasonable to consider that with the assistance it had provided, the Applicant could make his own further inquiries about data sources.
28. The Authority argued that the potential inconvenience to the requester of undertaking effort to secure information, and meeting the commercial costs, if any, of obtaining it was not a matter that compelled it to provide information otherwise reasonably available to the public – even where there may be a cost attached to that.
29. The Authority noted that the availability of information via the NRS was not specifically mentioned in its review outcome and recognised that perhaps it ought to have been. It considered that the information held by the NRS supported its reliance on the exemption in section 25(1) of FOISA, even where it was not practical for the Applicant to visit the NRS to inspect records or obtain copies.
30. The Authority confirmed that, across Registrar records and cemeteries information, it held records of deceased persons' name, biological sex, date of death/birth, date of interment, burial ground name, section and lair and their address at date of death. It said that the Applicant had access to all of the Authority's cemetery plans showing lairs and cemetery names and that all of the other information he requested was available via these sources and those it had advised him of.
31. However, the Authority explained that it did not hold the information requested in a format that could be extracted into spreadsheet form as requested by the Applicant. If it had not relied on the exemption in section 25(1) of FOISA, it said that it would have refused the request on the basis of excessive cost and officer time that would be involved in compiling the information requested. If it had relied on section 12(1) of FOISA to refuse the request on

the basis of excessive cost, it stated that it would have provided the Applicant with advice and assistance to refine his request into one which it could have responded to.

32. [redacted].

The Commissioner's view

33. The Commissioner has carefully considered the submissions from both the Applicant and the Authority, together with the terms of the Applicant's request and his [guidance](#)² on the exemption in section 25 of FOISA.
34. The Commissioner considers it important to note three things:
- (i) the Authority has confirmed that it holds information falling within the scope of the Applicant's request across Registrar records and cemeteries information.
 - (ii) for the exemption in section 25 of FOISA to apply, the information must be "reasonably" obtainable by the Applicant, not simply obtainable in theory.
 - (iii) the Applicant's request is essentially for a combined set of information (i.e. an extract, in spreadsheet form, from the Authority's burials "database").
35. Having carefully considered the Authority's submissions, the Commissioner is not satisfied that the Authority has demonstrated that the information requested, as a combined set of information, is reasonably obtainable by the Applicant from the sources suggested by the Authority.
36. The Commissioner acknowledges the Authority's position that it cannot export the information it holds across Registrar records and cemeteries information into the extract in spreadsheet form requested by the Applicant. If the issue in responding to the Applicant's request is the time and cost involved in providing him with the combined set of information requested, provisions within FOISA exist to deal with such circumstances.
37. However, the Commissioner does not consider that information can be said to be reasonably obtainable for the purposes of the exemption in section 25(1) of FOISA where, to obtain it, the requester would be required – with significant time and effort – to reconstruct the combined set of information requested from multiple and disparate sources.
38. In all of the circumstances, the Commissioner does not accept that the exemption in section 25(1) of FOISA applies to the Applicant's request. He therefore requires the Authority to issue a revised review outcome (otherwise than in terms of section 25(1) of FOISA) to the Applicant.
39. The Commissioner notes that the Authority suggested that if it had not relied on the exemption in section 25(1) of FOISA, it would have refused the request on the basis that the cost of compliance would exceed the upper cost limit under FOISA.
40. If, as appears likely, the Authority intends to refuse to comply with the request in terms of section 12(1) of FOISA, then it should ensure the revised review outcome sets out the projected costs of complying with the request. The Authority should also provide the Applicant with advice and assistance, in line with its duty under section 15 of FOISA, on how he might narrow the scope of his request or otherwise refine it to allow him to obtain at least some of the information.

² [BriefingSection25InformationOtherwiseAccessible 25.5.23.pdf](#)

41. [redacted].

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.

As the Commissioner was not satisfied that the information that would fulfil the Applicant's request was otherwise accessible to him, he found that the Authority was not entitled to rely on section 25(1) of FOISA in responding to this request.

The Commissioner therefore requires the Authority to issue a revised review outcome to the Applicant (otherwise than in terms of section 25(1) of FOISA), by **16 July 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

1 June 2026