Scottish Information Commissioner

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Decision Notice 174/2026

Employment practices

Authority: Midlothian Council
Case Ref: 202501379

Summary

The Applicant asked the Authority for information about the Authority's employment practices. The Authority disclosed information to the Applicant in relation to some of her requests and informed her that it did not hold information for other requests. The Authority also withheld information for two requests on the grounds that it was the personal data of third parties.

The Commissioner investigated and found that the Authority was entitled to withhold the personal data, but he was not satisfied that the Authority had complied with FOISA in responding to the remaining requests.

He required the Authority to carry out additional searches and provide 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); 15 (Duty to provide advice and assistance); 17(1) (Information not held); 38(1)(b),(2A)(a), (5) (definitions of "the data protection principles", "data subject", "personal data", "processing" and "the UK GDPR" and (5A) (Personal information); 47(1) and (2) (Application for decision by Commissioner).

United Kingdom General Data Protection Regulation (the UK GDPR) articles 4(1) (definition of "personal data") (Definitions).

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), (4)(d), (10) and (14)(a), (c) and (d) (Terms relating to the processing of personal data).

Background

1. On 7 June 2025, the Applicant made a request for information to the Authority. She made a multi-part request which asked for specific information about employment practices within the Authority. A full copy of the request is attached in the appendix to this decision.

2. The Authority responded on 21 July 2025. It responded to some of the requests by providing policy documents and the information sought, and it withheld other information under section 38(1)(b) of FOISA because it was the personal data of third parties. The Authority advised the Applicant that it held no information for some parts of the request.

3. On 22 July 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied that the Authority had withheld information under section 38(1)(b) of FOISA and she challenged the Authority's position that it did not hold some information. She considered the response was incomplete and stated her belief that other policies, procedures, guidance must exist. The Applicant also commented that the Authority had not sought to refine or clarify her request in any way.

4. The Authority notified the Applicant of the outcome of its review on 11 August 2025. The Authority upheld its response in full.

5. On18 August 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, in her view, the Authority had provided an incomplete response and it had not given proper consideration to the anonymisation of information withheld under section 38(1)(b) of FOISA. The Applicant also raised her concern that the Authority had not complied with its obligation to provide advice and assistance.

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 October 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 searches that the Authority had carried out to identify information captured by the requests and its reasons for withholding the information it considered to be personal data.

Commissioner's analysis and findings

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

Clarification of the Applicant's position

Request E22

10. The Applicant agreed that request E22 was a verbatim duplicate of request E21 and that this request did not require investigation.

11. The Commissioner, therefore, will not consider this matter further.

Scope of the investigation

12. On 18 August 2025, the Authority responded to further correspondence from the Applicant by advising her that it considered that compliance with her request would incur costs of £600 and that under section 12(1) of FOISA it would be deemed excessive to respond to. When questioned by the Commissioner, the Authority stated that it did not want to rely on section 12(1) of FOISA. Given this, the Commissioner will not consider section 12 in this decision notice.

13. The Commissioner's investigation has considered:

- whether the Authority had identified all relevant information falling within scope of the request and either disclosed it or applied an appropriate exemption,
- whether the Authority was entitled to apply section 17 of FOISA to some requests (discussed below),
- whether the Authority was entitled to apply section 38(1)(b) of FOISA to request A4 and request C2, and
- whether the Authority complied with the duty to provide advice and assistance required by section 15 of FOISA.

Section 38(1)(b) – personal information

14. The Authority relied on section 38(1)(b) of FOISA to withhold information captured by requests A4 and C2.

Request A4

15. The number of former employees who were required to repay study fees in full upon departure, with a breakdown by year across the local authority, specific to Midlothian Children's Services.

Request C2

16. The number of employees specific to Midlothian Children's Services who exited the Council under a settlement agreement (formerly compromise agreements), by year, from 19/10/2015 to 9/01/2025.

17. Section 38(1)(b) read in conjunction with section 38(2A)(a) or (b), exempts information from disclosure if it is "personal data" (as defined in section 3(2) of the DPA 2018) and its disclosure would contravene one or more of the data protection principles set out in Article 5(1) of the UK GDPR.

18. The exemption in section 38(1)(b) of FOISA applied on the basis set out in the preceding paragraph, is an absolute exemption. This means it is not subject to the public interest test in section 2(1)(b).

19. To rely on this exemption, the Authority must show that the withheld information is personal data for the purposes of the DPA 2018 and that disclosure of the information into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles found in Article 5(1) of the UK GDPR.

Is the withheld information personal data?

20. The first question the Commissioner must address is whether the information being withheld under this exemption is personal data for the purposes of section 3(2) of the DPA 2018.

21. Personal data" is defined in section 3(2) of the DPA 2018 as "any information relating to an identified or identifiable living individual". Section 3(3) of the DPA 2018 defines "identifiable living individual" as a living individual who can be identified, directly or indirectly, in particular by reference to –

- an identifier, such as a name, an identification number, location data, or an online identifier, or
- one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

22. The Court of Justice of the European Union looked at the question of identification in Breyer v Bundesrepublik Deutschland (C-582/14)[1]. The Court said that the correct test to consider is whether there is a realistic prospect of someone being identified. In deciding whether there is a realistic prospect of identification, account can be taken of information in the hands of a third party. However, there must be a realistic causal chain – if the risk of identification is "insignificant", the information won't be personal data.

23. Although this decision was made before the UK GDPR and the DPA 2018 came into force, the Commissioner expects that the same rules will apply. As set out in Recital (26) of the GDPR (the source of the UK GDPR), the determination of whether a natural person is identifiable should take account of all means reasonably likely to be used to identify the person, directly or indirectly.

24. In considering what is reasonably likely, the Recital states that all objective factors should be taken into account, such as the costs and amount of time required for identification, the available technology at the time of processing and technological developments.
It confirms that data should be considered anonymous (and therefore no longer subject to the UK GDPR) when the data subject(s) is/are no longer identifiable.

25. Request A4 and request C2 each asked for the number of employees who met certain criteria as specified in each of the requests.

The Applicant's comments

26. The Applicant commented that, where low numbers of individuals were captured by her requests and where that raised the risk of identification of individuals, she expected that the Authority would be able to take steps to negate or minimise those risk; steps such as aggregating data across years or service areas, banding data (for example, fewer than x), providing totals without granular breakdowns or removal contextual markers that enable identification. The Applicant noted that such techniques were well established and could adequately protect individual's data protection rights while allowing meaningful disclosure.

[1] https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62014CJ0582

The Authority's comments

27. The Authority submitted that the number of employees who met the criteria specified in each request was very small and that by responding to these requests, the Authority would create a real risk of identifying those individuals, particularly when combined with other information readily available to the Applicant.

28. The Authority submitted that, given the low number of employees that were relevant to these requests, it considered that there was no method to disclose the information without a real risk of identification of those employees.

The Commissioner's view

29. The Commissioner has carefully considered the submissions alongside the information captured by requests A4 and C2 that has been withheld by the Authority.

30. The Commissioner's guidance on section 38(1)(b) of FOISA[2] advises that in most cases it will be easy to tell if information is personal data but in some cases it can be more difficult. Furthermore, the guidance notes that it can be difficult to know whether disclosing numbers will lead to living people being identified. Paragraph 24 of the guidance states:

    "Public authorities responding to requests for numbers will therefore have to determine whether members of the public would be able to identify individuals from the statistics if they are disclosed."

31. In all the circumstances of this case, the Commissioner is persuaded by the Authority's argument that disclosure of the withheld information would identify living individuals and is, therefore, personal data in terms of section 3(2) of the DPA 2018. In the circumstances, he is not satisfied that the data can be anonymised so as to remove the risk of identification.

Would disclosure contravene one of the data protection principles?

32. Article 5(1)(a) of the UK GDPR requires personal data to be processed "lawfully, fairly and in a transparent manner in relation to the data subject."

33. "Processing" of personal data is defined in section 3(4) of the DPA 2018. It includes (section 3(4)(d)) disclosure by transmission, dissemination or otherwise making available personal data. The definition therefore covers disclosing information into the public domain in response to a FOISA request.

34. The Authority submitted that disclosure of the information captured by requests A4 and C2 would breach Article 5(1)(a).

35. The Commissioner must consider whether disclosure of the personal data would be lawful. In considering lawfulness, he must consider whether any of the conditions in Article 6 of the UK GDPR would allow the data to be disclosed.

36. The Authority submitted that there was no appropriate lawful basis under Article 6 UK GDPR to justify public disclosure of data that could lead to the identity of individual staff members in this context.

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[2] https://www.foi.scot/sites/default/files/2025-04/FOISA_Exemption_Guidance_Section_38_Personal_Information_v04_CURRENT_ISSUE_Access_Checked.pdf

37. Notwithstanding the Authority's view, the Commissioner considers condition (f) in Article 6(1) to be the only one which could potentially apply in the circumstances of this case.

Condition (f): legitimate interests

38. Condition (f) states that the processing will be lawful if it "…is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data (in particular where the data subject is a child)."

39. Although Article 6 states that this condition cannot apply to processing carried out by a public authority in the performance of their tasks, section 38(5A) of FOISA makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under FOISA.

40. The tests which must be met before Article 6(1)(f) can be met are as follows:

    - Does the Applicant have a legitimate interest in obtaining the personal data?
    - If so, would disclosure of the personal data be necessary to achieve that legitimate interest?
    - Even if the processing would be necessary to achieve that legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subjects?

Does the Applicant have a legitimate interest in obtaining the personal data?

41. The Applicant considered the information she had asked for in requests A4 and C2 engaged a clear and substantial legitimate interest, particularly in terms of:

    - Transparency and accountability in the use of public funds
    - Fairness and consistency in employment practices.
    - Governance of recruitment, sponsorship, settlement agreements, and acting-up appointments.
    - Public confidence in children's services and social work governance.

    She submitted that these matters went beyond her personal circumstances and related directly to how a public authority discharged its statutory and fiduciary responsibilities.

42. Given the nature of the subject matter, the Commissioner agrees that the Applicant has a legitimate interest in obtaining the personal data.

Is disclosure of the personal data necessary?

43. Having accepted that the Applicant has a legitimate interest in the personal data, the Commissioner must consider whether disclosure would be necessary to achieve the legitimate interest in the information.

44. Here, "necessary" means "reasonable" rather than "absolutely" or "strictly" necessary. When considering whether disclosure would be necessary, public authorities must consider whether the disclosure is proportionate as a means and fairly balanced as to the aims to be achieved, or whether the Applicant's legitimate interest could reasonably be met by means which interfered less with the privacy of the data subject.

45. The Commissioner has carefully considered the withheld information, as well as the position of the Authority and the Applicant.

46. He acknowledges the importance of understanding how a public authority manages the repayment of study fees and settlement agreements; however, he considers that there can be no legitimate interest in the identification of individuals who have been subject to settlement agreements or the repayment of study fees.

47. The Commissioner considers that the legitimate interest described by the Applicant in paragraph 41 is sufficiently met by the very fact that the number of individuals meeting the criteria described in requests A4 and C2 is low, and there is no need for the actual number to be disclosed.

48. On balance, the Commissioner considers, in light of the arguments provided and in all the circumstances of this case, that disclosure is not necessary to meet the Applicant's legitimate interests and that any such disclosure of the personal data would therefore be unlawful.

49. In the absence of a condition in Article 6 of the UK GDPR which would allow the specific numbers for each of these requests to be disclosed lawfully, disclosure would breach Article 5 of the UK GDPR and these figures are, therefore, exempt from disclosure under section 38(1)(b) of FOISA.

Section 17 – information not held

50. 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 public 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) of FOISA are not applicable in this case.

51. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4) of FOISA. This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

52. 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.

53. The Commissioner 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) held by the public authority.

54. In its review of 11 August 2025, the Authority relied on section 17 of FOISA for requests A2. A5, A6, A7, A8, B1, B2, B3, D1, E1 to E10, E14, E17, E18, E19, E23, E24, E25, E27, E28, E30 and E31, G1 to G3.

55. The Authority also gave responses of "zero" or "none" for requests B5 to B7, C6, D2, D3, E15, E16, E20, E21 and E22.

56. As noted previously, the full wording of these requests is listed in the Appendix below.

57. In further correspondence to the Applicant on 18 August 2025, following its review outcome, the Authority clarified that, for requests B5 to B7, it was unable to identify the number of employees captured by these requests as this information was not recorded in the Authority's iTrent HR system. In this correspondence, the Authority also changed its position for request E31 and stated that there were no cases recorded which fulfilled the request.

None, zero or not held?

58. The preamble to the information request asked for statistical information in a specified timeframe (19 October 2015 to January 2025). The investigating officer asked the Authority to confirm its position in relation to those requests where it had previously responded, in the initial response or review outcome, "none", "zero" or "not held". For some of these requests, the Authority had appeared to change position between the initial response, the review outcome and subsequent correspondence with the Applicant.

59. The Authority confirmed that information was "not held" for requests B5 to B7, C4 to C6, D2 to D3 and request E31 and that it was relying on section 17 of FOISA for these requests.

60. The Authority confirmed that its response to requests E15, E16, E20 and E20 (all requests which began "how many…?") was zero.

61. In relation to requests D1 and G1 to G3, the Authority commented that it did not hold the policies requested but stated that it did not intend to rely on section 17 of FOISA in responding to these requests.

The Applicant's comments

62. The Applicant disputed the Authority's application of section 17 of FOISA. She noted that the information she had asked for related to core employment, payroll, recruitment, learning and development, and governance functions and that the Authority was required to maintain adequate records to support lawful employment practices, auditability, equality duties, and financial governance.

63. The Applicant commented that repayment of study fees, salary deductions, settlement agreements, acting-up arrangements, recruitment decisions, and locum engagement would be expected to generate financial, contractual, HR, or governance records, even if the Authority's systems were not configured to report them automatically.

64. It was her view that section 17 should not apply merely because information was not retrievable by automated query. The Applicant considered that if the information she sought existed within contracts, HR files, payroll records, finance systems, settlement agreements, management approvals, or audit documentation, then it was "held" for the purposes of FOISA.

65. The Applicant argued that the Authority's reliance on software such as iTrent and Talentlink as definitive repositories was overly narrow. She considered that relevant information would reasonably be held by HR, Finance, Legal Services, Service Management, Workforce Planning, and Governance teams and that the absence of a bespoke reporting field in the software did not equate to information not being held.

The Authority's comments

66. The Authority explained that, following receipt of the Applicant's requests, staff in its Human Resources and Employment and Reward Systems departments who were responsible for administration of its iTrent employee system held meetings and discussions to consider what information might be held and where it would be located. Additional discussions were held with Children's Services staff and Legal Services in relation to those requests which sought information related to those departments. From these meetings and discussions, the Authority determined that it was not possible to manually collate the information requested for many of the requests because this information was not held in a way that could be reported on without asking employees with staffing responsibilities to carry out various searches and to review (what would be) unstructured records or information.

67. The Authority stated that searches had been carried out on its iTrent HR information system.

68. The Authority was asked whether any searches had been carried out on digital communications or messaging platforms. It explained that, given the request covered a ten year time period, and the variety of information sought, the Authority had decided that searches of these systems would be excessive. Additionally, the Authority commented that it could only search digital communications using an eDiscovery tool to retrieve communications using key words. The Authority argued that eDiscovery searches would be excessive in this case as it would not be possible to reduce search criteria to ensure a reasonable result could be reviewed within the cost limit.

69. The Authority was asked whether there was any reasonable expectation or legal obligation that it should hold the information requested. The Authority submitted that, as set out in relation to those requests where section 17 of FOISA had been applied, while it may be likely that some of the information was held, this would be within service areas and within specific systems that managers use for filing employment management information.

The Commissioner's view

70. The Commissioner is not satisfied with the Authority's approach to the Applicant's request. Requests which sought simple numerical responses have been responded to variously with "zero", "none" and/or "information not held". The Authority must be clear in its understanding and its communication with the Applicant whether its response is a numerical, recorded "zero" or whether the information is not held; they are not the same thing.

71. In addition, the Commissioner is not satisfied that the searches carried out by the Authority were sufficient to identify the information sought by the Applicant. While the Commissioner acknowledges that the request is complex and lengthy, he also considers that there are shared themes in the subject matter, as indicated by the headings written in the Applicant's request. It is the Commissioner's view that the Authority should have been able to carry out focused searches related to these headings. The Authority has not provided the Commissioner with any commentary or evidence to show that key words or phrases were used in the searches or what the search parameters were. Therefore, he has no confidence that robust searching has been carried out.

72. Throughout the Authority's response to the Applicant, it states that "information is not held centrally, therefore exemption section 17 applies". The Commissioner would like to remind the Authority in the strongest terms that a request for information under FOISA (or the EIRs) is not a request for information "held centrally". Requests for information relate to information held by the Authority as a whole, regardless of where that information is recorded.

It is the Commissioner's view that any information created or exchanged by a Scottish public authority, and which relates to that authority's business, is held by that authority for the purposes of FOISA and the EIRs.

73. This can include paper records, informal systems such as officers' notes, and temporary records, business-related information held on portable devices e.g. mobile phones (irrespective of whether these have been issued by the authority or are the personal property of its staff members) and non-corporate platforms, including private email accounts, text messages, mobile messaging apps (e.g. WhatsApp, Messenger, Signal etc) or any other form of personal communication. Such information is required to be located and retrieved where a request for that information has been received by the authority."

74. Given the circumstances described above, the Commissioner is not satisfied that the Authority has complied with Part 1 of FOISA in responding to the Applicant's request.

75. The Commissioner, therefore, requires the Authority to carry out fresh searches for information captured by the request, having regard to the advice given in section 6 of the Section 60 Code (December 2016)[3]. The Authority should also ensure that staff carrying out these searches maintain a record of those searches, for the Commissioner's consideration (paragraph 6.2.3 of the Section 60 Code).

Section 1(1) – general entitlement

76. As stated earlier, 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 and the information to be provided is that falling within the scope of the request and held by the authority at the time the request is received.

The Applicant's comments

77. The Applicant raised concern that her requests for policies, guidance or audit reports were either ignored or inadequately disclosed. She considered that the information she had requested would reasonable be expected to exist within HR, governance or senior management functions. The Applicant expected that the Authority's searches would have included relevant service management teams, approvals and governance functions, in addition to central HR systems.

78. It was the Applicant's view that the Authority had taken an unduly restrictive approach when considering the information held.

The Authority's comments

79. The Authority was asked specific questions regarding the policies, guidance and other materials that the Applicant referred to in her request.

80. Request A1 asked for the Authority's policy regarding repayment of study fees for employees who leave employment before fulfilling contractual service commitments. In responding to the Applicant's request, the Authority disclosed a copy of its Study Leave Guidance. However, in responding to the Commissioner's questions, the Authority submitted that there was no written policy relating to study fees.

[3] https://webarchive.nrscotland.gov.uk/public/20180606062315/https:/beta.gov.scot/publications/foi-eir-section-60-code-of-practice/

81. The Authority explained that all employees who are granted financial and non-financial support for further or higher education by the Authority will enter into a formal contract, known as a Contract of Commitment, and that it is this contract which places obligations on employees in relation to the repayment of study fees.

82. Request C3 sought any policies or decision-making criteria used to determine when settlement agreements are offered. The Authority responded by stating that,

"The Authority may choose to enter into a settlement or compromise agreement with an employee to resolve an employment related dispute having regard to ACAS guidance on the use of settlement agreements and legal advice in relation to the employment law risks associated with a particular dispute."

83. The Authority confirmed that it held the ACAS guidance referred to and that it held legal advice on the subject of settlement agreements. The Authority submitted that the legal advice referred to would be exempt from disclosure under section 36(1) of FOISA (Confidentiality).

84. In sections D and E, the Applicant asked for information about recruitment practices. The Authority maintained its position that any relationship between job applicants and existing employees of the Authority must be declared by job applicants in the application form. The Authority stated that its Recruitment and Selection Policy was currently under review and it intended to add a section about declaration of interest if the panel member knew applicants selected for interview.

85. The Authority explained that any complaints received about a recruitment exercise would be passed to the recruiting manager to respond to or would be logged on its complaints system if escalated further and the Authority noted that its retention schedules applied for the paperwork in relation to a recruitment exercise.

The Commissioner's view

86. The Commissioner has considered the submissions from both parties carefully.

87. Regarding the information sought in request A1 (the Authority's policy regarding repayment of study fees), the Commissioner is not satisfied that this request has been complied with. While in its initial response to the request, the Authority referred to the Contract of Commitment, the Authority raised confusion in its subsequent review (and in its later correspondence of 18 August 2025) by referring the Applicant to its Study Leave Guidance, April 2025; a single page document which makes no reference whatsoever to the matter of fees.

88. The Authority has submitted that there was no written policy on the matter of study fees which would fall within the terms of request A1. However, the Commissioner has no confidence in the searches that have been carried out by the Authority. He considers it possible that there could be some form of policy statement which dictates that a Contract of Commitment will be drawn up when an employee undertakes a period of study which attracts financial or non-financial support. The Commissioner is not satisfied that the searches carried out by the Authority, to date, would have uncovered such a policy statement if it exists.

89. At D1, the request sought any policies or guidance documents on recruitment and declarations of interest relating to familial or personal relationships. The Authority initially responded that job applicants were asked to share any close connections with councillors or senior employees and then, at review, stated that there was a no policy specific to this matter. The Commissioner is concerned by this response. It seems reasonable to conclude that part 6.1(c)(v) of the Recruitment and Selection Policy (dated February 2012) does cover this particular issue yet, when questioned on this point, the Authority appeared to maintain its position that the only information it held on this matter was within its job application form (although it did not disclose a copy of the form to the Applicant).

90. It would appear that the Authority is not aware of the content of its own policies. Although the Authority did disclose this policy to the Applicant, it did so in relation to request E1 and made no reference to it for request D1.

91. Again, the Commissioner has significant concerns about the Authority's handling of the Applicant's request. The Authority seems to be unable to respond to a simple request for policy documents and knowledge of its own policies seem questionable.

92. In all the circumstances of this case, the Commissioner is not satisfied that the Authority has complied with Part 1 of FOISA in responding to the Applicant's information request.

93. The Commissioner requires the Authority to consider the Applicant's request fully and to issue a new review outcome to the Applicant.

Section 15 – duty to provide advice and assistance

94. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

95. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice and assistance in a particular case) it conforms with the Section 60 Code.

96. It was the Applicant's view that, given the breadth of her request, the Authority should have engaged with her to clarify her priorities, advised on narrowing or phasing the request, or explained to her which elements of her request were likely to be problematic and why. Had the Authority done so, she considered that it was likely that a more focused and efficient response would have been possible and might have avoided the reliance on blanket exemptions.

The Commissioner's view

97. While the Applicant's request (on the whole) is extensive, each individual request is made in very clear terms. There is no question of ambiguity.

98. Section 5.1.1 of the Section 60 Code (December 2014) states that authorities have a duty to provide advice and assistance at all stages of a request and section 5.4.2 of the Code encourages less formal engagement with requesters to ensure effective handling of a request.

99. The Applicant has expressed clear views on this which suggests that there may have been some potential for her to narrow the scope of her request. However, as noted above, the Commissioner considers the Applicant's information request to be clear and unambiguous. Given this, he is not persuaded that additional engagement with the Applicant would have increased the Authority's understanding of the request, or enabled the Authority to suggest suitable amendments to narrow the terms of the request.

100. The Commissioner is satisfied that the request was clearly written and, while he has found failings in the Authority's handling of the request, he does not consider that it has breached the provisions of section 15 of FOISA.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that by withholding personal data captured by request A4 and request C2 under section 38(1)(b), the Authority complied with Part 1 of FOISA.

However, the Authority failed to comply with Part 1 of FOISA (in particular, section 1(1)) by failing to carry out all reasonable searches for information captured by the remaining parts of the request and by failing to properly identify information it does hold.

The Commissioner therefore requires the Authority to

- carry out reasonable and sufficient searches for all information captured by the request (with the exception of requests A4 and C2),
- maintain records of those searches and retain them, in case they are required for further consideration by the Commissioner, and
- issue a revised review outcome to the Applicant, based on the outcome of these searches.

by **14 August 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

30 June 2026

Appendix

Request

Under the Freedom of Information (Scotland) Act 2002, I am requesting the following statistical information held by Midlothian Council, covering the period from 19/10/2015 to January 2025 (inclusive):

A. Study Fee Repayment Policies and Practices

1. The Council's policy regarding repayment of study fees for employees who leave employment before fulfilling contractual service commitments.
2. The number of former employees who were required to repay study fees in full upon departure, with a breakdown by year across the local authority.
3. The number of former employees who were required to repay study fees in full upon departure, with a breakdown by year across the local authority, and who had the fees deducted from their final salary.
4. The number of former employees who were required to repay study fees in full upon departure, with a breakdown by year across the local authority, specific to Midlothian Children's Services.
5. The number of former employees who were offered repayment plans or partial repayments.
6. The number of former employees who were offered repayment plans or partial repayments, specific to Midlothian Children's Services.
7. The number of former employees who were not asked to repay any fees, despite a contractual obligation to do so, as I am aware many evaded repayments despite contractual obligations.
8. The number of former employees who were not asked to repay any fees, despite a contractual obligation to do so, as I am aware many evaded repayments despite contractual obligations, specific to Children's Services.

B. Disparities in Treatment of Sponsored vs Self-Funded Staff

1. Statistics regarding self-funding student employees (e.g. part-time postgraduates or trainees) who were requested to sign commitment contracts similar to those for Council-sponsored employees.
2. Statistics regarding self-funding student employees (e.g. part-time postgraduates or trainees) who were requested to sign commitment contracts similar to those for Council-sponsored employees, specific to Midlothian Children's Service.
3. Statistics regarding self-funding student employees (e.g. part-time postgraduates or trainees) who were requested to sign commitment contracts similar to those for Council-sponsored employees, specific to Midlothian Children's Service, social work department.
4. Whether such employees received comparable support (e.g. paid time off, salary supplements, supervision) to those funded by the Council.
5. How many employees subject to self-funding were not enforced to sign a contract of commitment, and the justification for this.
6. How many employees subject to self-funding were not enforced to sign a contract of commitment, and the justification for this, specific to Midlothian Children's Service.

7. How many employees subject to self-funding were not enforced to sign a contract of commitment, and the justification for this, specific to Midlothian Children's Service, social work department.
8. Whether such employees, specific to Midlothian Children's Services received comparable support (e.g. paid time off, salary supplements, supervision) to those funded by the Council.
9. Any written guidance or policy outlining the differences in support offered to self-funded vs. sponsored student employees.

C. Settlement Agreements and Exit Terms

1. The number of employees who exited the Council under a settlement agreement (formerly compromise agreements), by year, from 19/10/2015 to 9/01/2025.
2. The number of employees specific to Midlothian Children's Services who exited the Council under a settlement agreement (formerly compromise agreements), by year, from 19/10/2015 to 9/01/2025.
3. Any policies or decision-making criteria used to determine when settlement agreements are offered.
4. Whether any internal audits or reports have been conducted regarding the use of settlement agreements in relation to staff complaints, whistleblowing, or poor practice.
5. Any anonymised reviews or audits into trends or governance concerns related to the use of such agreements.
6. Any anonymised summaries of complaints or internal investigations related to managerial misconduct or nepotism which resulted in exit packages.

D. Recruitment Practices and Nepotism

1. Any policies or guidance documents on recruitment and declarations of interest relating to familial or personal relationships.
2. Any recorded breaches or complaints of nepotism in recruitment, and the number of cases investigated since 19/10/2015 and to date.
3. Any recorded breaches or complaints of nepotism in recruitment specific to Midlothian Children's Services, and the number of cases investigated since 19/10/2015 and to date.

E. Recruitment Practices and Potential Nepotism

1. The councils policy on competitive recruitment, how many employees have been recruited to post having been interviewed by one interviewee.
2. How many employees have been recruited to post having been interviewed by one interviewee in contradiction with recruitment policy.
3. How many employees have been recruited to post having been interviewed by one interviewee in contradiction with recruitment policy., specific to Midlothian Children's Services.
4. How many employees have been recruited from fixed term to permanent posts in the absence of the competitive recruitment process.
5. How many employees have been recruited from fixed term to permanent posts in the absence of the competitive recruitment process, specific to Midlothian Children's Services.
6. How many employees have been recruited from fixed term to permanent posts in the absence of the competitive recruitment process, specific to Midlothian Children's Services, in particular in Midlothian Children's Services Social Work Department.

7. How many employees have been made subject to the competitive recruitment process in the process of moving from fixed term posts to permanent posts.
8. How many employees have been made subject to the competitive recruitment process in the process of moving from fixed term posts to permanent posts, specific to Midlothian Children's Services.
9. How many employees have been made subject to the competitive recruitment process in the process of moving from fixed term posts to permanent posts, specific to Midlothian Children's Services, in particular in Midlothian Children's Services Social Work Department.
10. How many employees have been recruited to post having been interviewed by one interviewee in contradiction with recruitment policy, specific to Midlothian Children's Services.
11. How many locum employees have been retained in long term employment without having to take up a permanent position as per the council policy. What has been the duration of this retainment in contradiction with council policy.
12. How many locum employees have been retained in long term employment without having to take up a permanent position as per the council policy. What has been the duration of this retainment in contradiction with council policy, specific to Midlothian Children's Service.
13. How many locum employees have been retained in long term employment without having to take up a permanent position as per the council policy. What has been the duration of this retainment in contradiction with council policy, specific to Midlothian Children's Service Social Work Department.
14. How many locum employees have been afforded sponsored learning and development opportunities across the council, in contradiction with organisational policy.
15. How many locum employees have been afforded sponsored learning and development opportunities across the council, in contradiction with organisational policy, in particular in Midlothian Children's Services.
16. How many locum employees have been afforded sponsored learning and development opportunities across the council, in contradiction with organisational policy, in particular in Midlothian Children's Services, Social Work Department.
17. How many unsuitably qualified employees have been recruited to posts in the absence of qualifications specified in advertising and recruitment processes across the council, and what is the justification for such individuals being given positions over qualified candidates who have met the quantifiable requirements of positions advertised.
18. How many unsuitably qualified employees have been recruited to posts in the absence of qualifications specified in advertising and recruitment processes across the council, and what is the justification for such individuals being given positions over qualified candidates who have met the quantifiable requirements of positions advertised, specific to Midlothian Children's Services.
19. How many unsuitably qualified employees have been recruited to posts in the absence of qualifications specified in advertising and recruitment processes across the council, and what is the justification for such individuals being given positions over qualified candidates who have met the quantifiable requirements of positions advertised, specific to Midlothian Children's Services Social Work Department.
20. How many employees within Midlothian's collective social work departments who have been afforded sponsored postgraduate learning and development opportunities, despite not having completed the 2 year postgraduate requirements to support their application, and the justification for this.

21. How many employees within Midlothian's collective social work departments who have been afforded sponsored postgraduate learning and development opportunities, despite not having completed the 2 year postgraduate requirements to support their application, and the justification for this., in particular in Midlothian Children's Services.
22. How many employees within Midlothian's collective social work departments who have been afforded sponsored postgraduate learning and development opportunities, despite not having completed the 2 year postgraduate requirements to support their application, and the justification for this., in particular in Midlothian Children's Services.
23. How many managers managed and supervised their own children and family members.
24. How many managers managed and supervised their own children and family members, specific to Midlothian Children's Services.
25. How many managers managed and supervised their own children and family members, specific to Midlothian Children's Services, in particular the children's services social work department.
26. The council's policy on internal acting-up appointments and recruitment to permanent posts.
27. The number of acting up appointments that were given to internal staff in the absence of the advertising and adherence to the competitive recruitment process across the local authority.
28. The number of acting up appointments that were given to internal staff in the absence of the advertising and adherence to the recruitment process across the local authority, specific to Midlothian Children's Services.
29. The number of acting-up appointments that were converted into permanent appointments without a competitive process between 2015–2025.
30. For the appointment of any Acting Up Team Leader, Team Leader, Acting Up Service Manager, Service Manager and Chief Officer roles during that period:
    a. Whether the roles were publicly or internally advertised.
    b. Whether a formal interview process took place.
    c. Whether there was more than one candidate.
31. Any internal investigation, complaint, or audit into breaches of recruitment procedures or nepotism/favouritism.

F. Overtime Policy

1. What is the council's policy on overtime, including where employees are expected to spend overnights away from home and where overtime is not a requirement of their role.
2. What is the council's policy on overtime, including where employees are expected to spend overnights away from home and where overtime is not a requirement of their role, specific to Midlothian Children's Services, and including the Children's Services Social Work Department.

G. Registered professionals

1. What is the council's policy on unregistered residential services professionals practicing in residential services in contradiction with registration requirements of governing bodies such as SSSC. What would be the justification for breaching such requirements, and what would the wider implications be.
2. What is the council's policy on registered social workers practicing in Midlothian children's services social work, and unregistered children's services practitioners (unregistered with

SSSC) providing services to residential services professionals in contradiction with registration requirements of governing bodies such as SSSC, and where they are allocated to children on their caseload, however providing a paid residential practitioner service out with the remit of their role. What would be the justification for this conflict of interest, and breaching such requirements, and what would the wider implications be.

3. What is the council's policy on registered social workers and unregistered childrens services practitioners (unregistered with SSSC) practicing in Midlothian Children's Services providing services to residential services professionals in contradiction with registration requirements of governing bodies such as SSSC, and where they are allocated to children on their caseload, however providing a paid residential practitioner service out with the remit of their role. What would be the justification for breaching such requirements, and what would the wider implications be.

4. How many social workers and practitioners have undertaken this role to your awareness, the justification for supporting this against governance requirements and the noted conflict of interest, and the wider implications.