



Scottish Information
Commissioner
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Decision Notice 193/2026

Charging to transport to/from day services

Applicant: The Applicant

Authority: City of Edinburgh Council

Case Ref: 202600002

Summary

The Applicant asked the Authority when arrangements were made with a service user for direct payment for transport to a service to stop. The Authority refused to disclose the information as it considered it to be personal information. The Commissioner investigated and found that the Authority had not accurately interpreted part of the request. He required the Authority to reconsider the Applicant's request and issue a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 38(1)(b) (Personal information); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 24 September 2025, the Applicant made a request for information to the Authority. He referred to a previous response from the Authority, which stated that one service user had been identified as paying a provider directly for transport to a service, and that arrangements had been made for this to stop. He asked the Authority to provide:
 - (i) The date on which the service user was contacted
 - (ii) The date on which the payments were stopped.

2. The Authority responded on 21 October 2025. It refused to provide the information requested as it considered it to be third-party personal data and exempt under section 38(1)(b) of FOISA.
3. On 24 October 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not consider the exemption in section 38(1)(b) of FOISA applied.
4. The Authority notified the Applicant of the outcome of its review on 9 November 2025. It confirmed that, in this particular case, there were additional factors relating to the provision of assisted transport which required resolution, and that a new provider commenced on 14 July 2025 which covered the full cost of the service.
5. On 24 December 2025, 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 for the reason set out in his requirement for review.

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 16 April 2026, 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 withheld 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 related to the withheld information and why it considered the exemption in section 38(1)(b) of FOISA applied.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

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

The Applicant's submissions

12. By way of background, the Applicant explained that on 27 May 2025 the Authority's Policy and Sustainability Committee passed an [amendment¹](#) in relation to the Authority's Assisted Transport policy and procedure. This amendment provides that: "Service users who are contributing to transport will stop paying immediately".
13. The Applicant submitted that the purpose of his initial request, to which his present request referred, was to find out what action had been taken in response to the decision of the Committee. The response he received to his initial request stated that one service user had been identified as paying a provider directly for transport to a service, and that arrangements had been made to stop this.
14. The Applicant stated that he wished to know whether this action had occurred between the Policy and Sustainability Committee's decision of 27 May 2025 and the submission of his initial request or if it occurred after that.

The Authority's submissions

15. During the investigation, the Commissioner asked the Authority why it considered the withheld information it provided to him fell within the scope of the Applicant's request. While the Commissioner must be careful not to reveal the specific content of the withheld information, it comprised an email provided by an employee of the Authority dated 23 April 2026 (i.e. postdating the request).
16. The Authority acknowledged that the information it provided to the Commissioner as the withheld information did not provide the precise date on which the Authority contacted the service user. However, it explained that it considered the email was "relevant information falling within scope, even though it did not contain the precise information in the exact form sought".
17. The Commissioner further queried whether the Authority held information specifically addressing parts (i) and (ii) of the request.
18. For part (i) of the request, the Authority confirmed that it had not contacted the service user to ask them to stop paying a provider directly for transport to a service. It explained that the circumstances of the individual's transport service superseded the need to do that.
19. For part (ii) of the request, the Authority initially stated that information about the particular circumstances of the individual, including their transport arrangements, were held within that individual's case file. The Authority subsequently submitted that it did not hold information regarding any payments as these were invoiced by the third-party transport provider.

The Commissioner's view

20. The Commissioner has carefully considered the submissions from both the Authority and the Applicant, as well as the wording of the request and the information that was provided to him by the Authority as withheld information.
21. The Commissioner is not satisfied that the information provided to him as withheld information actually addresses the request. He notes that the Authority has itself acknowledged as much.

¹ <https://democracy.edinburgh.gov.uk/documents/s86957/4.2%20V2%20Minute%20of%2027.05.25.pdf>

22. In relation to part (i) of the request, the Authority stated, during the investigation, that it had not contacted the individual and therefore did not hold a date on which it did.
23. As noted above, the information the Authority provided to the Commissioner as withheld information in relation to part (i) of the request does not actually address that part of the request. The Commissioner therefore finds that the Authority failed to accurately interpret part (i) of the request at the time of the review outcome. In that respect, he must find that the Authority failed to comply with Part 1 of FOISA in responding to part (i) of the request.
24. If the Authority's position is that it does not hold any information relevant to part (i) of the request, it must provide the Applicant with a notice, under section 17(1) of FOISA, to that effect.
25. In relation to part (ii) of the request, the Authority's position now appears to be that it does not hold the information requested as any payments were invoiced by the third-party transport provider. However, as noted above, the Authority also indicated that such information would be held within the service user's case file.
26. Irrespective of this apparent contradiction, the information the Authority provided to the Commissioner as withheld information in relation to part (ii) of the request does not actually address that part of the request. The Commissioner therefore finds that the Authority failed to accurately interpret part (ii) of the request at the time of the review outcome. In that respect, he must find that the Authority failed to comply with Part 1 of FOISA in responding to part (ii) of the request.
27. As the Commissioner is not satisfied that the information the Authority provided to him as the withheld information in response to parts (i) and (ii) of the request actually addresses the request, he will not consider whether the Authority was entitled to withhold that information under the exemption in section 38(1)(b) of FOISA.
28. Instead, the Commissioner requires the Authority to reconsider parts (i) and (ii) of the request and to provide the Applicant with a fresh review response (all in terms of section 21 of FOISA). In doing so, the Authority must:
 - consider carefully the terms of the request and ensure that its interpretation of the request is reasonable and fully addresses the request
 - take adequate and proportionate steps to establish what information is held, using appropriate search terms and searching all locations and mediums where relevant information may be held
 - consider, in relation to part (ii), whether, if payments were invoiced by the third-party transport provider, information about those payments is nevertheless held by the Authority for the purposes of FOISA.

Section 15(1) of FOISA – Duty to provide advice and assistance

29. Section 15 of FOISA requires Scottish public authorities to provide advice and assistance to applicants, so far as it would be reasonable to expect them to do so.
30. Section 15(2) of FOISA provides that a Scottish public authority shall be taken to have complied with this duty if it conforms with the guidance contained in the Scottish Ministers'

Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs ([the Section 60 Code](#)²).

31. In this case, the Applicant has made clear to the Commissioner that he is not interested in obtaining personal data. Instead, he wishes to determine whether the Authority implemented the decision of its Policy and Sustainability Committee in relation to these payments in a timely manner.
32. Paragraph 5.3.1 of the Section 60 Code provides that public authorities must provide appropriate advice and assistance to enable a requester to make their request in a way which will describe the information they want reasonably clearly.
33. In the Commissioner's view, the wording of the Applicant's request appears to have inadvertently focused on a narrower subset of information related to a single service user, rather than on information relating to whether the Authority implemented the decision of its Policy and Sustainability Committee in relation to these payments.
34. In the circumstances, the Commissioner requires the Authority to engage with the Applicant, in terms of section 15(1) of FOISA, to achieve a mutually shared understanding of the scope of the request and, if required, to advise him how to make a fresh information request for the specific information he is interested in.

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.

The Commissioner therefore requires the Authority to reconsider the request and to issue a fresh review outcome to the Applicant, in terms of section 21 of FOISA, by **11 September 2026**.

In doing so, the Commissioner requires the Authority to carry out adequate and proportionate searches in response to the request and to engage with the Applicant, in terms of section 15 of FOISA, to achieve a mutually shared understanding of the scope of the request. If required, the Authority must also advise the Applicant how to make a fresh information request for the specific information he is interested in.

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.

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2026/03/foi-eir-section-60-code-practice/documents/foi-eir-section-60-code-practice/foi-eir-section-60-code-practice/govscot%3Adocument/foi-eir-section-60-code-practice.pdf>

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.

Cal Richardson
Deputy Head of Enforcement

28 July 2026

