



Scottish Information
Commissioner
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Decision Notice 217/2026

Proposals for the Controlled Parking Zone for Portobello and Joppa.

Authority: City of Edinburgh Council
Case Ref: 202501337

Summary

The Applicant asked the Authority for information related to the proposals for the controlled parking zone for Portobello and Joppa. The Authority disclosed some of the information requested to the Applicant and notified him that some other information was not held. The Applicant believed the Authority held further information falling within the scope of his request. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position that it held no recorded information falling within scope of part of the Applicant's request. He required the Authority to reconsider that part of the Applicant's request, carry out fresh searches for the information requested 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); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 23 May 2025, the Applicant made a multi-part request for information to the Authority. He asked for information related to the proposals for the controlled parking zone (CPZ) for Portobello and Joppa. He specifically asked for:
 - (i) Council employee informed me (at the Portobello Library event) that a company based in England was employed to gather data and produce a 'heat map' of traffic volumes.

Did representatives of this company physically visit each street, in-person, to gather information?

- (ii) If they did not actually visit the street, why not?
- (iii) If they did physically visit streets, were all streets within the proposed CPZ visited?
- (iv) If not, why not?
- (v) If in-person visits did take place, when did these visits occur? (day of the week, time of day, date please)
- (vi) What information, precisely, was gathered during these visits?
- (vii) Were residents interviewed? If so, what questions were asked?
- (viii) If residents were not asked, why not?
- (ix) At the drop-in event on 21 May, named officer told me that people on every street (though not all) were asked for information/views on the CPZ.
- (x) How many people were asked for their views?
- (xi) What percentage of Portobello residents did this 'sample' represent?
- (xii) By what method did this occur? (in-person, by telephone, email, etc?)
- (xiii) How many people responded? (numbers & percentage of those asked)
- (xiv) I live on Joppa Terrace and am unaware of any resident being asked for their view. Can you confirm if Joppa Terrace residents were consulted and if so, when?
- (xv) How does the Council justify the imposition of residents parking permits – a regressive tax which takes no account of ability to pay – with its obligations under the Fairer Scotland Duty?
- (xvi) How much money does the Council estimate will be spent in the initial set-up phase and in the subsequent 10 years in administering the Portobello CPZ?
- (xvii) How much money will the Council derive from the Portobello CPZ per annum?
- (xviii) Will this money (assuming there is a profit) be ring-fenced to improve road surfaces and public transport in the Portobello CPZ?
- (xix) What analysis has the Council undertaken to assess the socio-economic impact on poorer households in the zone?

2. The Authority contacted the Applicant on 27 May 2025 to indicate that it understood the questions asked had been addressed by a named officer of the Authority in an email of 23 May 2025, and sought clarity from the Applicant as to whether he had any outstanding questions in regard to this request.
3. The Applicant responded to the Authority on the same date, explaining that as the named authority officer had only sent him general information on the proposed CPZ for Portobello and Joppa this did not answer his specific questions. The Applicant asked that the Authority answer the questions listed in his request individually.
4. The Authority responded on 23 June 2025. It disclosed some information in response to parts of the request and notified the Applicant, in line with section 17 of FOISA, that it did not hold other information. This included information which would fulfil part (v) of the request. In some instances, links were provided to the Applicant to enable him to access information which would fulfil parts of the request and, as the Authority was of the view that this information was otherwise accessible to the Applicant, it relied on section 25 of FOISA.
5. On 24 June 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he believed the Authority held information falling within the scope of part (v). He was also dissatisfied with

the Authority's failure to respond to parts (ix) and (xix) of his request and did not consider that the information disclosed in response to part (xiv) answered his request.

6. The Authority notified the Applicant of the outcome of its review on 22 July 2025. In response to part (v) of his request the Authority re-iterated that it did not hold information regarding the exact times and days of each of the 2021 survey visits. It did, however, explain that further on-street parking surveys had taken place and more were planned for 2025. Information was provided in response to parts (ix), (xix) and (xiv) of the request.
7. On 7 August 2025, the Applicant wrote to the Commissioner, applying for a decision under section 47(1) of FOISA. The Applicant limited his application to the Authority's failure to provide the information falling within the scope of Part (v) of his request. He argued that the Authority had been deliberately obstructive in responding to his request for information. The Applicant was of the view that the insistence of the Authority that the current consultation on the proposals for the CPZ in Portobello and Joppa was being carried out in an open and democratic manner, with people's views being taken account of, did not tally with its refusal to explain what happened to the data gathered in 2021.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 11 September 2025, the Authority was notified in writing that the Applicant had made a valid application to the Commissioner. The case was subsequently allocated to an investigating officer.
10. 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 how it had established what recorded information it held falling within the scope of the request.

Commissioner's analysis and findings

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

Section 17(1) – Notice that information is not held

12. 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 are not applicable in this case.
13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request held by the authority at the time the request is received. This is not necessarily to be equated with information an applicant believes the 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 a notice in writing to that effect.

14. 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.
15. 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.
16. In his application to the Commissioner, the Applicant limited his dissatisfaction to the Authority's response to part V of the request.

The Applicant submissions

17. The Applicant believed that the Authority was deliberately obstructive in responding to his request for information; he explained that although the Authority has insisted that the current 'consultation' on the proposals for a CPZ for Portobello and Joppa are being carried out in an open and democratic manner, with people's views being taken account of, this did not tally with its refusal to explain what had happened to the data it gathered in 2021.
18. The Applicant disputed the response from the Authority, where it said (in response to parts (i) to (vi) of his request) parking surveys were conducted to allow the Authority to better understand where parking pressures were present. Although the consultancy responsible for the surveys might have an office in Birmingham, a dedicated project team was based in Edinburgh throughout the survey period. Multiple visits were made on different days, and at different times, to all streets shown on the heat map; however, information regarding the exact times and days of visits was no longer held. The Applicant questioned what had happened to this information, whether it had been deleted or lost. The Applicant was of the view that this information (which covered part (v) of the request) must be held by the Authority.
19. The Applicant stated that the contract to carry out 'heat map' work was given by the Authority to a company based in England. He argued that a number of people (including Authority employees) had intimated that whilst this company was supposed to carry out street inspections in-person, they did not. Instead, they relied heavily on other forms of data, gathered remotely.
20. The Applicant commented that if the Authority had lost/deleted/failed to maintain proper records of the information gathered in 2021, either by its own employees or by an external contractor, it had a public duty to share that information with the public.
21. The Applicant submitted that although he clearly asked the questions; "What has happened to the recorded information?" "Has the information deleted or lost", the Authority failed to answer these questions.

The authority's submissions

22. The Authority submitted that the information requested in part (v) was not held. It explained that its officers were unlikely to have considered retaining the data (belying the Portobello parking pressure heat map) beyond the point at which it was reported to (and scrutinised by the Committee) in December 2022. The Authority noted that when the Committee approved the report containing the heat map, members instructed officers to consider an additional

area for inclusion in the (then) upcoming CPZ proposal, which was not included in the heat map. As the heat map was no longer required for Committee purposes and the area in scope for the proposal had changed, there was no longer a business need to retain information/communications related to the heat map.

23. The Authority commented that the heat map formed a small part of the informal process, where officers sought permission to propose a CPZ. The proposal of the zone required a separate, formal, legal process, which was still ongoing. Parking pressure surveys (which would provide data for new heat maps) had been repeated in 2025 as part of the formal legal process, the results of which would supersede the surveys and heat maps produced in the past.
24. The Authority stated that there was no data held beyond that presented in the Transport and Environment Committee report of 8 December 2022, entitled "[Item 7.4 - Strategic Review of Parking - Results of Informal Consultation on Phases 3 and 4.pdf](#)"¹.
25. The Authority confirmed that the streets in the [heat map](#)² were all visited and had been colour coded based on data gathered during street visits. Three streets were not colour coded, although the reason for this was not known.
26. With regard to information which would fulfil part (v) of the Applicant's request, the Authority confirmed that this information would have been held when discussion of the visits took place in 2019. It explained that officers were unlikely to have considered retaining the data beyond the point at which it was reported to (and scrutinised by) Committee, in December 2022.
27. It re-iterated that the Committee approved the report (containing the heat map) and requested that a further area be added to the (then) upcoming CPZ proposal, meaning that the heat map was no longer reflective of the CPZ due to be proposed, nor would it be required in relation to any future committee proceedings.
28. It further explained the heat map in question was used as part of an informal process prior to the CPZ being formally proposed and would be superseded by new survey data which would be presented to Committee in December 2025. The new data would be representative of the current parking pressures and geography of the area.
29. The Authority submitted that there was no record indicating when this information was deleted, but it suggested that it would have been deleted in view of there being no identified requirement for it to be held and the officers were unlikely to have considered retaining the data beyond the point at which it was reported to Committee, in December 2022.
30. The Authority indicated that there was no legislative or policy basis for the deletion of the information, and informal internal emails (including those between officers and consultants) were only likely to be held for so long as there was an identifiable business reason.

The Searches

31. The Authority submitted that the officers who were involved in discussions with consultants searched for incoming and outgoing emails using "heat map" as a key term. They also searched for emails to and from addresses including "@projectcentre.co.uk", the email domain used by the consultancy involved.

¹ [Item 7.4 - Strategic Review of Parking - Results of Informal Consultation on Phases 3 and 4.pdf](#)

² [TRO 24 05 - Proposed Order - Maps.pdf](#)

32. It stated that one of the officers noted they had met with the consultant responsible for the production of heat maps in the Authority's office (during the project), with online discussion generally taking place via the consultant's Microsoft Teams channel. The Teams channel (which the Council understood to have been deleted following the conclusion of the project) could not be retrieved.
33. The Authority explained that discussions relating to both the initial Freedom of Information request and the review had taken place via Microsoft Teams calls.
34. The Authority commented that the Parking and Traffic Regulation Manager and the leader of the Traffic Orders team were consulted and carried out searches. It submitted that these colleagues were the officers involved in discussions with the consultants and would have been most likely to hold the requested information.
35. The Authority provided the Commissioner with examples of the searches carried out via Microsoft Outlook. The searches did return results, but these were not within the scope of the request and were related to other parking proposals and projects. It confirmed that various permutations of the searches were carried out, such as the key terms having been searched in the "subject" line and the email domain entered into the "to" line.

The Commissioner's view

36. Having considered all relevant submissions and the terms of Part V of the request, the Commissioner is not satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any recorded information that fell within the scope of part (v) of the request.
37. In all cases where an Applicant disputes whether an authority has identified all relevant information falling within the scope of their request, it falls to the authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold any further information. In this case, notwithstanding the opportunity given to provide comments, the Commissioner is not satisfied that the Authority has achieved this.
38. Where an authority has notified a requester that it does not hold any recorded information, evidence of the authority's searches will usually be a key consideration during the Commissioner's investigation. As a minimum, authorities should be able to provide the Commissioner with the following information:
 - I. details of the records or locations which were searched.
 - II. why these were the relevant records and locations.
 - III. the keywords used.
 - IV. which staff were involved and why they were considered relevant.
 - V. the outcome of the searches.
 - VI. evidence that the searches have been carried out, including the outcome of the searches.
39. In this case, the Authority has not provided the Commissioner with adequate evidence of the searches it undertook in response to the Applicant's request. Specifically, the Authority did not provide sufficient evidence of the breadth of the searches undertaken. From the limited evidence provided by the Authority it is not clear when these searches were conducted, what

date range the searches covered or the resulting returns produced by these searches. Instead, the Authority simply described the searches (in terms of the locations searched and those tasked with searching them).

40. The Commissioner is concerned to note that whilst communication took place between the Authority and the consultant responsible for carrying out the work via Teams channels and during an in-person meeting, no record of these exchanges is held.
41. He is also concerned that whilst information of relevance to part (v) of the request was held in 2019, no record appears to have been retained of when this information was deleted or the reason for doing so.
42. The Commissioner therefore cannot be assured, on the balance of probabilities, that no recorded information is held which would fulfil part V of the Applicant's request.
43. In the circumstances, the Commissioner cannot uphold the Authority's claim, based on the submissions it has provided, that it holds no recorded information falling within the scope of the part V of the request. The Commissioner is therefore not satisfied that the Authority was entitled to give the Applicant notice, under section 17(1) of FOISA that it did not hold information which would fulfil part V of the Applicant's request.
44. The Commissioner therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information requested, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA). In doing so, the Authority must:
 - (i) 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.
 - (ii) Retain evidence of those searches in the event of a further appeal to the Commissioner.
45. As part of its revised review outcome, the Commissioner would also urge the Authority to consider providing the Applicant with evidence of the searches it has undertaken, in order to assure him that they were adequate and proportionate. Doing so may obviate the need for a further appeal to the Commissioner, particularly if the Authority maintains (following further searches) that it does not hold any further information falling within the scope of the Applicant's request.

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.

Specifically, the Commissioner finds that the Authority failed to satisfy him that it did not hold any recorded information which would fulfil part (v) of the Applicant's request. As a result, he finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), **by 17 October 2026**

In doing so, he requires the Authority to have regard to the conditions set out in paragraphs 44 and 45 above.

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

2 September 2026

