



Scottish Information
Commissioner
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Decision Notice 231/2026

Lift replacement works at specified property

Authority: Aberdeen City Council
Case Ref: 202502362

Summary

The Applicant asked the Authority for information relating to lift replacement works at a specified property. The Authority disclosed some information to the Applicant and informed her that it did not hold any other information captured by the request. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position that it held no further information. He required the Authority to 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), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 21 October 2025, the Applicant made a request for information to the Authority. Among other things she asked for:

“ ... regarding the ongoing lift replacement works at [specified property]. The works have been carried out by a subcontractor ... appointed by the council. One lift has been out of service for several months, and the contractor was due to begin work on the second lift on 13 October, which has not yet happened. Residents have not received any updates about the reason for this delay or revised timescales. I therefore request:

...

2. The original start and completion dates for both lifts.

...

4. Whether the contract includes provisions for liquidated and ascertained damages (LADs) or financial penalties in the event of delay.

5. Whether the contract includes any insurance coverage (such as Contractor's All-Risk or delay-related insurance) relevant to delays or disruption.

6. Any correspondence, reports or meeting notes between the council and the contractor concerning the delay to the second lift. ...".

2. The Authority did not respond to the information request.

3. On 21 November 2025, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.

4. The Authority notified the Applicant of the outcome of its review on 22 December 2025, in the following terms:

- for part 2, it disclosed the start and completion date of the first lift and the scheduled start date of the second lift. It also issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold a completion date for the second lift.
- for part 4, it explained that the contract included provision for liquidated and ascertained damages in the event of delays attributable to the contractor. However, it commented that this condition did not apply in this instance, as the works had been rescheduled at the Authority's request.
- for part 5, it stated that insurance coverage did not apply in this situation.
- for part 6, it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

5. On 23 December 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated that she was dissatisfied with the outcome of the Authority's review for the following reasons:

- for parts 2 and 6 of her request, she did not believe that the Authority did not hold the information requested
- for parts 4 and 5 of her request, the Authority had provided her with "opinions or assurance" rather than a response in terms of the recorded information held.

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 8 April 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 how the Authority interpreted the request and how it established what information it held falling within the scope of the request.

Commissioner's analysis and findings

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

FOISA or EIRs

10. Having considered the submissions on this point from the Authority, the Commissioner accepts the decision of the Authority to deal with the request under FOISA rather than under the Environmental Information (Scotland) Regulations 2004 (the EIRs).
11. The Commissioner would also note that he can see no detriment to the Applicant by considering her request under FOISA rather than the EIRs, nor has the Applicant disputed the Authority's decision to handle her request under FOISA.

Section 1(1) – General entitlement

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, 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.
13. 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 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.
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) actually held by the public authority.

Interpretation of parts 4 and 5 of the request

The Applicant's submissions

16. The Applicant considered that the Authority had misinterpreted parts 4 and 5 of her request.
17. The Applicant noted that the Authority had stated in respect of parts 4 and 5 of her request that contractual provisions for liquidated and ascertained damages did not apply and that insurance coverage also did not apply in this situation.

18. The Applicant submitted that FOISA required Scottish public authorities to disclose recorded information. Where the Authority had stated that “LADs” or “insurance” did not apply, she considered that this amounted to unsupported contractual or legal conclusions, or “opinions or assurance”, rather than a response which addressed the recorded information actually held by the Authority.

The Authority’s submissions

Part 4

19. The Authority explained that it had interpreted part 4 of the request as seeking “confirmation as to whether the relevant contract included provisions for liquidated and ascertained damages or other financial penalties in the event of delay”.
20. The Authority stated it had therefore considered part 4 of the request to be asking whether such contractual provisions existed within the contract, rather than as seeking legal advice or a detailed contractual assessment of whether those provisions were enforceable, in the particular circumstances.
21. In responding to part 4 of the request, the Authority had confirmed that the contract included provision for liquidated and ascertained damages in the event of delays attributable to the contractor. It explained that further wording explaining that the condition “did not apply in this instance” was intended to provide further context and assistance to the Applicant.
22. However, the Authority recognised that its answer could have more clearly distinguished between the existence of the contractual provision and the separate question of whether it applied to the circumstances at the time.

Part 5

23. The Authority explained that it had interpreted part 5 of the request as seeking “confirmation as to whether the contract included any insurance coverage, including Contractor’s All Risk or delay-related insurance, which was relevant to delays or disruption in the circumstances described by the Applicant”.
24. The Authority also commented that it had understood part 5 of the request as “asking whether insurance coverage applied to the delay or disruption arising from the rescheduling of the second lift”.
25. The Authority stated that it had understood the examples provided by the Applicant (i.e. Contractor’s All Risk or delay-related insurance) to be indicative of the type of cover she considered might be relevant to the circumstances described in the request.
26. The Authority submitted that its response that “insurance coverage did not apply in this situation” was intended to answer the request by reference to the circumstances of the delay, rather than to provide a full extract or schedule of all insurance provisions contained in the contract.
27. The Authority explained that the position being conveyed was that, based on the information available to it, no insurance cover was considered to apply to the rescheduling of the second lift, in the specific circumstances.
28. However, the Authority acknowledged the Applicant’s argument that its response may have appeared to be expressed in general or relative terms. It recognised that a “clearer” response could have separated the issue of whether insurance provisions existed (i.e. whether the contract contained any insurance provisions of the type referred to), from the matter of whether any such provision was considered applicable to the delay in question.

29. The Authority recognised that its response was framed in relation to the latter issue, namely “whether insurance cover applied in the circumstances”, rather than as “a detailed statement of all the insurance provisions contained within the contract”.
30. The Authority explained that it had not intended to rely on general assurance or opinion in place of recorded information, and that its response was based on its understanding of the contract and the circumstances of the delay at the time of responding. However, the Authority accepted that its review response “could have been more precise in that respect”.

The Commissioner’s view

31. The Commissioner has carefully considered the submissions received from the Applicant and the Authority.
32. Regarding part 4 of the request, the Commissioner considers the Authority’s interpretation (as set out at paragraph 19) to be reasonable in that it recognises that the Applicant sought confirmation of the presence, in the contract specified, of the clauses (or financial penalties) referred to. He also notes that the Authority’s response to part 4 of the request explicitly confirmed that the contract specified included the LADs provision referred to by the Applicant.
33. The Commissioner acknowledges that the Applicant considered that the Authority’s explanation that the LADs provision did not apply in the circumstances indicated a failure to properly interpret part 4 of the request.
34. Although the Authority’s response to part 4 of the request did not explicitly refer to “financial penalties”, the Commissioner considers that the response, including the explanation that the Authority’s decision to delay the works invalidated such provisions, demonstrated that it had properly interpreted this part of the request.
35. In the circumstances, the Commissioner is satisfied that the Authority properly interpreted part 4 of the request.
36. Regarding part 5 of the request, the Commissioner considers it is less clear, from the Authority’s response, that it fully understood that part of the Applicant’s request at the time of responding.
37. The Commissioner recognises that the Authority attempted to provide further useful context when responding to part 5 of the request. However, unlike its response to part 4 of the request, he notes that the Authority did not provide an explicit response to the question posed by the Applicant. In other words, it did not provide confirmation that the specified contract did (or did not) include insurance coverage relevant to delays or disruption.
38. However, the Commissioner is nevertheless satisfied, on the basis of the submissions he has received (in particular those at paragraph 23), that the Authority understood that the Applicant effectively sought a “yes/no” answer to part 5 of the request.
39. In conclusion, the Commissioner considers that the Authority provided an imprecise response to part 5 of the request, albeit a response based upon a correct interpretation of that part of the request.
40. Having found that the Authority correctly interpreted parts 4 and 5 of the request, the Commissioner will now go on to consider the searches for relevant information undertaken by the Authority in response to parts 2, 4, 5 and 6 of the request.

Was further information held by the Authority?

41. In this case, the Authority informed the Applicant that:

- for part 6 of the request, that it held no information falling within the scope of the request
- for part 2 of the request, that it did not hold a completion date for the second lift
- for parts 4 and 5 of the request, that it held no further information than that already identified and disclosed to the Applicant.

The Applicant's submissions

42. For part 2 of the request, the Applicant submitted that the Authority had failed to carry out adequate searches for a completion date for the second lift. For part 6 of the request, she considered that the Authority had failed to carry out adequate searches for any correspondence, reports or meeting notes relating to the decision to defer the second phase of works by several months.
43. The Applicant commented that the matters described in parts 2 and 6 of the request had “significant operational and resident impact”, and that it was difficult to reconcile the Authority’s assertion that no records existed for those parts of her request. She considered that the Authority’s response raised concerns that recorded information existed but had not been adequately searched for.
44. The Applicant also considered that, where the Authority had asserted that LADs or insurance did not apply (in terms of parts 4 and 5 of the request), the Authority had failed to state whether any records existed which explained that position.

The Authority's submissions

45. The Authority submitted that its review response had been provided in good faith on the basis of the information understood to be held at the time of the request, following consultation with the relevant service area responsible for the lift replacement works.
46. The Authority stated that it had sought to respond to each part of the request directly and, where it held no recorded information, it had advised the Applicant of its reliance on section 17(1) of FOISA accordingly.
47. The Authority submitted that searches for relevant information had been carried out by its Capital Service. This service area was considered best placed to carry out searches as it was responsible for management of the lift replacement project, liaison with the contractor, and holding any project, contract programme or correspondence records relating to the specified property.
48. The Authority further stated that it had consulted officers in the service who had responsibility for (or knowledge of) the lift replacement works and the contractor relationship, those officers being best placed to confirm what recorded information was held, in response to the Applicant’s request.
49. However, the Authority explained that the official who had provided a response (in terms of search returns) to its Access to Information Team at the time of responding to the Applicant’s request had since left the Authority.
50. The Authority stated that, as a result, it was unable to confirm with certainty what searches, “if any”, were undertaken by that official at the time of its original response and subsequent

review outcome. In the absence of a clear record of the searches carried out, the Authority accepted that it was therefore unable to demonstrate that the original searches were adequate or proportionate.

51. The Authority recognised that there were “lessons to be learned” from its handling of the request in this case. In respect of future requests, it stated that it would ensure that searches were clearly documented, that the relevant service area recorded the systems, locations, and keywords used, and officers consulted, and that any reliance on section 17(1) of FOISA was supported by evidence of adequate and proportionate searches.

The Commissioner’s view

52. Having considered all relevant submissions and the terms of the request, the Commissioner is not satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held information falling within the scope of part 6 and an element of part 2 of the request or further information (in addition to that already identified and disclosed) falling within the scope of parts 4 and 5 of the request.
53. In all cases where an applicant disputes whether an authority has identified all relevant information falling within the scope of the request, it falls to the authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold information (or does not hold any more information than it has already identified and disclosed). In this case, the Commissioner is not satisfied that the Authority has achieved this.
54. Where an authority has told a requester that it does not hold information (or does not hold any more information than it has already identified and disclosed), 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) evidence that the searches have been carried out, including the outcome of the searches.
55. 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 screenshots of the searches undertaken, nor did it detail the key terms used when carrying out these searches. Instead, the Authority only described the searches (in terms of those tasked with carrying out searches).
56. In the circumstances, the Commissioner cannot uphold the Authority’s claim, based on the submissions it has provided, that it holds no information falling within the scope of part 6 and an element of part 2 of the request and no further information (in addition to that already identified and disclosed) falling within the scope of parts 4 and 5 of the request
57. 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:

- 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
 - retain evidence of those searches in the event of a further appeal to the Commissioner.
58. 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 her 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 request.
59. While the Authority has apologised for its failure to retain evidence of searches, and the Commissioner recognises the steps taken by it to ensure that no such failure occurs in future, he would reiterate that it is critical that the Authority retains evidence of searches in this case and that it does so as a matter of course in response to information requests.
60. In all cases, authorities should take adequate and proportionate steps to establish what information is held (or is not held) and they should be able to explain, if challenged, why the searches they carried out were reasonable and likely to identify all relevant information. In almost all cases, this will necessarily involve consideration of the evidence and outcome of those searches.

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 holds no information falling within the scope of part 6 and an element of part 2 of the request and no further information (in addition to that already identified and disclosed) falling within the scope of parts 4 and 5 of the request. As a result, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to reconsider these parts of the 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), **by 26 October 2026**. In doing so, he requires the Authority to have regard to the conditions set out in paragraphs 57 and 58 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.

Cal Richardson
Deputy Head of Enforcement

9 September 2026