Scottish Information Commissioner
www.foi.scot

Decision Notice 260/2026

Braco Village Hall Committee

Authority: Perth and Kinross Council
Case Ref: 202600066

Summary

The Applicant asked the Authority for information relating to the Braco Village Hall Committee. The Authority stated that it did not hold the information requested. During the investigation, the Authority disclosed some relevant information to the Applicant. The Commissioner investigated and found that the Authority had not justified its position that it did not hold the remainder of the information requested for the purposes of FOISA. He required the Authority to reconsider the request, carry out adequate and proportionate searches and issue a revised review outcome to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 3(2) (Scottish public authorities); 17(1) (Notice that information is not held); 21(1) (Review by a Scottish public authority); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 31 October 2025, the Applicant made a request for information to the Authority. He referred to previous correspondence with the Authority regarding the Braco Hall Committee (the Committee) and, among other things, asked whether the Authority held any further information about the Committee's constitution, legal structure, office bearers, minutes of meetings or financial accounts.

2. The Authority responded on 25 November 2025. It issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

3. On 5 December 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 agree that the Authority did not hold the information requested.

4. The Authority notified the Applicant of the outcome of its review on 8 January 2026, which upheld its original decision and provided further detail as to why it considered that it did not hold the information requested for the purposes of FOISA.

5. On 13 January 2026, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review 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 26 February 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.

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 why it considered that it did not hold the information requested for the purposes of FOISA.

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 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) 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 by section 1(4) of FOISA. This is not necessarily to be equated with information an applicant believes the public authority should hold.

Information disclosed during the investigation

12. During the investigation, the Authority reconsidered its position in respect of the financial accounts requested by the Applicant. It determined that these financial accounts, comprising the Committee's annual accounts (which supported applications for a grant administered by the Authority), were held by the Authority for its own purposes and therefore for the purposes of FOISA.

13. This information should have been disclosed to the Applicant by the date of the review outcome (at the latest). The Commissioner must therefore find that the Authority's failure to disclose this information in response to the initial request or requirement for review was a breach of section 1(1) of FOISA.

14. The Authority disclosed these financial accounts to the Applicant, subject to the redaction of certain third-party personal data. As the Authority has now disclosed the redacted accounts to the Applicant (who has confirmed that he does not wish to challenge these redactions), the Commissioner does not require the Authority to take any action in response to this failure.

15. The Commissioner will now go on to consider whether the remaining information requested by the Applicant is held by the Authority for the purposes of FOISA.

Does the Authority hold further information for the purposes of FOISA?

16. Section 3(2) of FOISA defines the circumstances in which information is held by a Scottish public authority. Section 3(2)(a)(i) of FOISA states that if a Scottish public authority holds the information on behalf of another person, then the information is not held by that authority for the purposes of FOISA. Consequently, if the information requested in any given case is held on behalf of another person, the authority must give the applicant notice under section 17(1) of FOISA.

17. The word "held", in relation to information requested under FOISA, has a specific meaning in section 3(2)(a)(i) of FOISA. When information is present within a Scottish public authority's premises and systems only because it is held on behalf of another person (in the legal sense), that information is not held by the authority for the purposes of FOISA.

18. There is no suggestion that section 3(2)(a)(ii) of FOISA applies so, for the purposes of this decision, information will be held by the Authority if it is held by the Authority otherwise than on behalf of the Committee.

The Applicant's submissions

19. The Applicant submitted that the Committee's sole responsibility was to manage a property on behalf of the Authority. He considered that it followed that any information recorded by the Committee in the course of these duties would be held by the Authority for the purposes of FOISA.

20. The Applicant noted that, to his knowledge, the agreement between the Authority and the Committee was "uncomplicated by any commercial arrangement" and that the management agreement confirmed that the Authority held this information by way of a provision entitling the Authority to access this information at will.

21. The Applicant commented that the Committee was established to manage Braco Village Hall on behalf of the Authority and that this is its sole function. He submitted that the Committee would not exist were it not for the Authority establishing the management agreement and the Committee would no longer exist if the Authority withdrew from the agreement.

22. As the Committee had been established by the Authority for the sole purpose of managing a building on its behalf, was accountable solely to the Authority and was obliged (through the management agreement) to provide information to the Authority, the Applicant considered that there was an appropriate connection that suggested that the information requested was held by the Authority for the purposes of FOISA.

23. During the investigation, the Applicant provided the Commissioner with an email sent from an employee of the Authority which confirmed that accounts from the Committee were requested on an annual basis and that it also investigated the running of the Committee on a regular basis. The Applicant considered that this strengthened his argument that the information requested by him was held by the Authority for the purposes of FOISA.

The Authority's submissions

24. The Authority explained that the relationship with the Committee was a "licence to occupy arrangement". This was not a management agreement but a "minute of agreement between [the Authority] and the Office Bearers of the Committee to regulate the terms and conditions upon which the Committee will take on the responsibility for the operation and management of the building".

25. The Authority considered that the Braco Village Hall Committee existed independently of the Authority and, as a result, it did not hold the information requested for the purposes of FOISA. It explained that it had reached this view following considerable dialogue regarding the circumstances in which information is considered to be held by a public authority for the purposes of FOISA.

26. As it considered the information requested belonged to the Committee and was not held by the Authority for the purposes of FOISA, the Authority confirmed that it did not undertake searches in response to the request.

27. The Authority confirmed that the Committee fell within the definition of another person for the purposes of section 3(2)(a)(i) of FOISA. Other than the financial information, which it disclosed to the Applicant during the investigation, it considered that any information held regarding the Committee could only be deemed to be held by the Authority on behalf of the Committee.

28. The Authority added that it did not have the power to delete or amend that information without the consent of the Committee, could not apply its own policies and procedures to the information and had restricted access to that information.

The Commissioner's view

29. The Commissioner has carefully considered the submissions from both parties, together with the terms of the request and the nature of the information requested.

30. In considering whether an authority holds information for the purposes of FOISA, the Commissioner will consider a number of factors, including (but not limited to):

- whether there is an appropriate connection with the authority, meaning that the information is for the purposes of carrying out its functions as a public authority
- the content of the information
- the circumstances in which it was created or received, and
- how it is held.

31. The Commissioner accepts that the Committee may be properly regarded as a separate entity to the Authority. However, that does not determine whether particular information falling within the scope of the request is held by the Authority for the purposes of FOISA. That assessment must be carried out by reference to the particular information requested and is, in light of the factors set out above, necessarily dependent on the nature of the

information, the circumstances in which it came to be in possession of the Authority, the purpose for which it was created, received and retained, the degree of control exercised over it and its relationship to the Authority's own functions.

32. In the circumstances, the Commissioner cannot accept, without adequate and proportionate searches and consideration of any information actually located, a general proposition that all information concerning the Committee would not be held by the Authority for the purposes of FOISA simply because the Committee exists separately from the Authority. Indeed, the Commissioner notes that the Authority has now accepted that it holds the Committee's annual accounts for its own purposes (and therefore for the purposes of FOISA).

33. During the investigation, the Authority provided the Commissioner with a copy of the licence to occupy arrangement between the Authority and the Committee. He notes that the fourteenth clause states:

"The Management Committee shall submit to the [Authority] such reports, Minutes of all its meetings, details of accounts and records of usage of the Building as the [Authority] shall require."

34. As the Authority has not undertaken any searches in response to the request, it is not apparent to the Commissioner whether the Authority has required the provision of such information from the Committee. However, the Commissioner considers that there is a sufficient basis for the Authority to have searched for, and considered, information held in connection with the arrangements described above and information that otherwise falls within the scope of the request.

35. In the Commissioner's view, such information may have an appropriate connection with the Authority's own functions and interests and may be held by the Authority in its own right (and therefore for the purposes of FOISA), even if that information is also held on behalf of the Committee.

36. As stated above, the Authority did not undertake searches because it considered that the information requested belonged to the Committee and was not held by the Authority for the purposes of FOISA. In the circumstances, the Commissioner cannot accept this. He considers that the Authority should have established what information it possessed relevant to the request and then assessed whether that particular information was held solely on behalf of the Committee or also for the Authority's own purposes.

37. In all of the circumstances, the Commissioner is not satisfied that the Authority does not hold information falling within the scope of the request for the purposes of FOISA. He therefore finds that the Authority was not, on the basis claimed, entitled to issue the Applicant with a notice in terms of section 17(1) of FOISA.

38. The Commissioner therefore requires the Authority to reconsider the request afresh, carry out adequate and proportionate searches for the information requested and assess, by reference to the specific content of any such information identified, whether that information is held by the Authority for the purposes of FOISA.

39. Where information is found to be held for those purposes, the Authority must consider whether the information should be disclosed, subject to any applicable provision of FOISA. However, this does not mean that any such information will necessarily be disclosed. The right to information in section 1(1) is not absolute and is subject to the application of any relevant exemptions in Part 2 of FOISA.

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.

In particular, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA by:

- incorrectly relying on section 17(1) of FOISA without first carrying out adequate and proportionate searches and without properly assessing, by reference to the specific content of any such information identified, whether that information is held by the Authority for the purposes of FOISA
- failing to identify and disclose the financial accounts information by the date of the review outcome (at the latest).

The Commissioner requires the Authority to reconsider the request afresh, carry out adequate and proportionate searches for the information requested and issue the Applicant with a revised review outcome, under section 21 of FOISA, by **16 November 2026**. In doing so, the Authority must have regard to the conditions set out in paragraphs 38 and 39 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.

David Hamilton
Scottish Information Commissioner

30 September 2026