Scottish Information Commissioner
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Decision Notice 286/2026

Pre-Employment Tribunal Settlements

Authority: Aberdeen City Council
Case Ref: 202501557

Summary

The Applicant asked the Authority for information related to pre-employment tribunal settlement agreements. The Authority stated the complying with the request would exceed the £600 cost limit, so it was not obliged to comply. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA)[1] sections 1(1), (2) and (6) (General entitlement); 12 (Excessive cost of compliance); 15 (Duty to provide advice and assistance); 21(1) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner).

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004[2] (the Fees Regulations) regulations 3 (Projected costs); 5 (Excessive cost – prescribed amount).

Background

1. On 3 July 2025, the Applicant made a request for information to the Authority. He asked for the following:

   i. "Employment Tribunal Cases – Annual Profile

[1] https://www.legislation.gov.uk/asp/2002/13/contents
[2] https://www.legislation.gov.uk/ssi/2004/467/contents/made

For each of the last 10 financial or calendar years (or as many years as records are held), please provide:

- The number of employment tribunal claims lodged against the Authority.
- Of those lodged, the number that:
    - Proceeded to a full Employment Tribunal hearing
    - Were withdrawn, settled, or dismissed prior to the final hearing

If a breakdown is not held for each of these categories, please confirm the total number of claims lodged per year.

ii. Pre-Employment Tribunal Settlement Agreements – Annual Payments

For the same timeframe (last 10 years or as far back as records are held), please provide:

- The total amount paid out each year by the Authority in pre- Employment Tribunal settlement agreements (i.e. payments made to employees or ex-employees to settle potential or actual employment disputes before an Employment Tribunal hearing took place).
- If available, also provide the number of such agreements entered into each year."

2. The Authority responded on 31 July 2025. The Authority provided data for part (i) of the request but explained that the records held to answer part (ii) encompassed reviewing over 700 files because the information was not stored centrally. The Authority stated that this exercise would exceed the upper cost threshold and therefore it was not required to comply.

3. On 2 August 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 did not believe the Authority had offered evidence to support this position or that alternative methods to provide relevant information were explored. Within his requirement for review, the Applicant submitted a new request in which he sought to refine his earlier request to bring it within the cost threshold.

4. The Authority notified the Applicant of the outcome of its review on 1 September 2025. The Authority upheld the application of section 12(1), maintaining that compliance would exceed the cost threshold because the information held was not recorded in a format that would allow for easy extraction.

5. On 4 September 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not believe that the Authority were entitled to apply section 12(1), that the Authority failed in its advice and assistance duties under section 15 by not engaging with him in any attempt to refine the parameters of his request, namely his suggestion to aggregate the data.

6. Following receipt of the application, the Commissioner sought resolution by seeking the Authority's position on a narrowed scope. The Applicant advised his request would be satisfied with aggregated cost per year and total number of settlements per year. The

Authority responded on 14 October 2025 advising that they could only disclose incomplete data. The Applicant remained dissatisfied.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

8. On 5 November 2025, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.

9. 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 its recorded information, how the cost of compliance was calculated and any advice and assistance given to the Applicant.

Commissioner's analysis and findings

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

The information held by the Authority

11. Section 1(4) of FOISA provides that the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the Authority at the time the request is received.

12. The Authority advised in the initial response that the information in part (ii) of his request was not recorded centrally; to answer this would require a solicitor or paralegal to review approximately 700 files, at around 5 minutes per file, equating to around 58 hours at a cost of £870. The Authority further explained in its review response that the folders this information is held in are not recorded by year, so narrowing the scope by year does not reduce the burden placed on the Authority to extract the information.

13. The Authority supplied screenshots in its submissions to the Commissioner that show the files the information is recorded in and how these are organised. Having considered the screenshots and explanation provided by the Authority, the Commissioner is satisfied that the Authority holds the recorded information requested. The question he must now address is whether the Authority was correct to refuse the Applicant's request on the basis that responding would exceed the £600 cost limit.

Section 12(1) – (Excessive cost of compliance)

14. Section 12(1)[3] of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations[4]. This amount is currently £600 (see regulation 5). Consequently, the Commissioner has no power to require the disclosure of information

[3] https://www.foi.scot/sites/default/files/2022-03/FeesandExcessiveCostofComplianceBriefing.pdf

[4] https://www.legislation.gov.uk/ssi/2004/467/contents/made

should he find that the cost of responding to a request for that information would exceed this sum.

15. The projected costs a Scottish public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs (whether direct or indirect) it reasonably estimates it will incur in locating, retrieving and providing the information requested, in accordance with Part 1 of FOISA. The maximum hourly rate an authority can charge for staff time is £15 per hour. The authority may not charge for the cost of determining (i) whether it actually holds the information, or (ii) whether or not it should provide the information.

The Authority's submissions on section 12(1)

16. In its initial submissions, the Authority explained that this information was held on SharePoint, in a secure drive only accessible to legal officers. The Authority supplied two screenshots as evidence of the number of folders that required checking. This was two folders holding a total of 709 folders combined equating to 6775 files.

17. The Authority advised that a simple search using phrases like 'settlement agreement' and 'COT3' (a conciliated agreement) wouldn't be sufficient to locate relevant information because of the way information of that type is held. The example given was an agreement held as an attachment to an email, that wouldn't be picked up by a search conducted in this manner because the attachment was not saved separately. The Authority stated that there was no uniform naming convention for saving files to general folders. Folders were not named according to date, and legal services did not have a designated folder or spreadsheet for settlement agreements. As such, the Authority asserts that the files would all need to be reviewed and the information extracted manually.

18. The Authority advised that the 5 minutes per file quoted in their initial response was a 'conservative estimate'. The Authority narrated that it had engaged with the Applicant and attempted to narrow the scope of the request, but the suggestion by the Applicant to reduce by the number of years would not reduce time required to collate the information because of the way the records had been saved. The Authority, when engaged by the Commissioner at validation, offered data based on the financial records held by their payroll department, because settlement payments made via payroll could be supplied but settlements paid by BACs or cheque would not be captured, therefore the data would be incomplete.

19. The Authority were asked to complete a sampling exercise to evidence the burden this request placed on them. The Authority provided screen shots as evidence of the folders that would require screening for information. This exposed an alphabetical filing system. The Authority stated that in one hour they were able to check folders 'A' to 'R' in full and part of folder 'S', in which the summary provided showed that folders labelled 'B', 'E' and 'I' to 'N' and 'Q' were empty.

20. The Authority found 2 relevant records in the one-hour exercise which they detailed in a table, which showed that one settlement was paid via payroll and the other did not have a recorded payment method.

21. In their initial submissions, the Authority supplied screenshots of the two digital folders that equated to the 709 folders that the Authority stated, would require preview for relevant information. The first folder (labelled 'L10024 General') shows 477 folders in total and the second labelled 'L047 Employment Advice') shows 232 folders. The Authority explained that

these folders could not be searched for key words or phrases because of the way information has been saved, as explained above.

22. When asked for a sampling exercise to be undertaken the Authority then supplied screenshots of the sub folders inside 'L10024' and 'L047'. A screenshot of the folder labelled 'L10024' contained an alphabetised filing system (folders 'A' to 'Z' and a '1. Closed Files' folder) and a further screenshot showed the contents of the folder labelled 'A'. Alongside this the Authority provided an itemised list of the contents of the folders labelled 'A' to 'Z'. The itemised list was presented as "'L10024 – General': A- 0 Files, 21 Folders; B – 0 Files, 0 Folders", etc.

23. The 'A' folder screenshot showed a total of 15 folders, one of which was named 'Agreements'. The Commissioner notes that there are 15 folders here, and not the 21 itemised in the Authority's summary count for the cost calculation. The next screenshot showed the contents of subfolder 'B', which was empty. The Commissioner also notes that this matches the itemised list which stated that folder 'B' had 0 files and 0 folders.

24. The next screenshot showed the 'C' folder showing 7 folders the itemised list stated "'C – 12 Files, 7 Folders". The 'D' folder was itemised as having 6 folders and 0 files which matched the screenshot provided. The 'G' folder screenshot showed 1 file labelled 'General-HR-Queries' and did not match the 11 files and 3 folders summarised.

25. The next screenshot showed the 'S' folder which contained 2 folders called 'Settlement-Agreements' and 'Settlement-proposals' and nothing else. This did not match the 933 files and 59 folders that were itemised and described as partially checked in the sampling exercise undertaken.

26. The final screenshot provided showed the second folder labelled 'L047-Employment-Advice' which was itemised as containing 240 folders in the sampling exercise despite the screenshot provided in the initial submissions, showing it to contain 232 folders. The sub folders contained in this file had various labels including 'Agency-Worker-Audit'; 'Procedure-Manual' and 'Trade-Unions', the rest were a combination of alphabetical order and 'L047' as a beginning reference number, then an individual's name. The number of folders appearing to have an individual's name attached were around 12.

27. The Authority advised that there were no statutory obligations requiring it to record information requested in part (ii) in a specific format or report on it in any particular manner, nor record it in a central register, hence there is not one held.

28. The Authority advised that the financial information held relating to BACs and cheque payments could not be identified as relating to pre-Employment Tribunal settlement agreements only. The purpose of those payments is not recorded in a manner that would allow them to be identified as those relating to settlements, the legal files would be required to be previewed first and establish names of individuals and the names used to search financial records. The Authority argue that to do this would involve the creation of new information, a list of individuals to search the legal records to cross reference information, rather than retrieving existing report or recorded list by Finance. The Authority explain that financial records that are called settlements may refer to settlements relating to other service provision, like housing, contractual or other financial settlements. As such, a separate list of BACs or Cheque payments for settlements alone, is not possible from financial records only.

The Applicant's submissions 12(1)

29. The Applicant stated that the cost exemption was misapplied. The Applicant argues that the Authority's response fails to demonstrate that reasonable steps were taken to identify a less burdensome retrieval method. The Applicant commented that FOISA requires authorities to demonstrate why the information cannot reasonably be supplied within cost limits, but instead it appears to have assumed the most labour-intensive approach. The Applicant stated that the Authority had failed to provide evidence of electronic searches, or evidence of summary level financial or audit records being considered. The Applicant also highlighted that no attempt for partial disclosure was made within the cost limit.

30. The Applicant stated that settlement agreements involved public money and therefore there is a public interest in financial accountability. The Applicant specified that an inability to provide aggregated data or partial disclosure frustrates public scrutiny and undermines accountability. If it is the case that the Authority cannot provide this data without exhaustive manual review, this raises serious concerns regarding compliance with financial governance obligations under the Local Government (Scotland) Act 1973.

31. The Applicant posits that it is reasonable to assume that settlement agreements would be tracked for a number of different purposes including financial reporting, external audit, insurance and liability management and legal oversight. That this information is not centrally held is at odds with normal public sector governance practice.

32. The Applicant further posits that the Authority's position is contradictory, because the files were not centrally held but also being quantified in order to calculate cost per file, cannot both be true. Despite accepting the volume of data held and the Authority's position about time required to collate the information, when he then asked for a narrowed scope within the cost threshold, the Authority still did not provide that data.

The Commissioner's view about section 12(1)

33. The Commissioner has considered the submissions made by the applicant and the Authority carefully.

34. This is a frustrating case, where there appears to be a divide between the Information Governance Team in the Authority and their Legal Services Team. The Commissioner accepts that the information is recorded in a way that is likely to be unnecessarily labour intensive. The Commissioner also believes that this is a direct result of the way the information is being stored.

35. The Commissioner notes that in an hour the Authority checked 63 folders, which is the total number of folders that the Authority claimed were in the folders labelled 'A' to 'R', and ignoring that the screenshots did not match up with the totals in the itemised list provided for the sampling exercise. This alone would calculate as 709 (total number of records held) divided by 63 (the number of records that can be checked in an hour) = 11.25 (number of hours required to complete the task), when multiplied by £15 equals £168.75, falling well below the cost threshold.

36. The Commissioner, based on the evidence supplied, considers that it is reasonable that a more targeted search could have been undertaken, given the number of empty folders itemised and the number of folder names that are likely to contain no relevant information. The Commissioner also does not consider poor records management to be a reasonable justification for not being able to collate information that allows for financial transparency of public funds.

37. The Commissioner has considered the notion that the Authority may have intentionally or accidentally digitally hidden some files in the screenshots provided, however, given there was no explanation or contextual information alongside the screenshots, he has no option but to accept the inconsistency on face value. The Commissioner is not satisfied that the Authority has adequately justified why locating, retrieving and providing the information required to respond to the Applicant's request would be cost excessive.

38. In all the circumstances, therefore, the Commissioner cannot uphold the Authority's claim that it would be too costly to comply with the request.

39. The Commissioner finds, therefore, that the Authority was not entitled to rely on section 12(1) of FOISA in this case. He requires the Authority to carry out a further review and provide the Applicant with a revised review outcome, otherwise than in terms of section 12(1) of FOISA.

Section 15 (Duty to provide advice and assistance)

40. 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.

41. 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 Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs (the Section 60 Code[5]).

42. The below extracts are from the Section 60 Code published in 2016 that was in place during the Authority's handling of the request in this case. An updated version[6] of the Section 60 Code was issued in March 2026.

43. The Section 60 Code states (at paragraph 5.1 in Part 2):

"Authorities should offer advice and assistance at all stages of a request

Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded." (Paragraph 5.1.1.)

44. The Section 60 Code further states (at paragraph 9.5. in Part 2):

"Where excessive costs apply

When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. Indeed, such advice may be required in line with the duty to provide advice and assistance." (Paragraph 9.5.5.). "In giving advice, you may wish to take account of how

[5] https://web.archive.org/web/20250513062935/https:/www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf

[6] 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

much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly." (Paragraph 9.5.6..)

45. In the circumstances of this case, the Commissioner is not satisfied that the Authority has fully complied with its duty under section 15 of FOISA.

46. The Authority stated that it believed it had provided adequate advice and assistance, but the narrowed scope offered by the Applicant was rejected and the compromise offered by the Authority was incomplete data, creating a stalemate position that did not provide a suitable solution.

47. The Commissioner would remind the Authority that they are the experts in the way information is recorded and more specific guidance about how the scope may be narrowed could have been attempted. It is not unreasonable to expect that a narrowed scope by year and aggregated data would be an easier task but that would require searchable records. The Authority may wish to review its records management policy, which defers to national guidance and has nothing specific about this type of information. The Local Authority Accounts (Scotland) Regulations 2014[7], provides;

"**6.**—(1) A local authority must keep adequate accounting records.

(2) Adequate accounting records means records that are sufficient—

a) to show and explain the local authority's transactions;

b) to disclose with reasonable accuracy, at any time, a summary of the financial position of the authority; and

c) to enable members of the local authority to ensure that any accounts that require to be prepared comply with the requirements of these Regulations."

48. Whilst this is not the direct function of the Commissioner, he notes that the records in this case and how they are stored in particular has created a situation that is not in keeping with the spirit of FOISA, or indeed the financial reporting obligation laid out above.

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 Authority has failed to satisfy the Commissioner that it would be too costly to comply with the request. As a result, the Commissioner finds that Authority was not entitled to rely on section 12(1) (Excessive cost of compliance) of FOISA and, in doing so, it failed to comply with section 1(1) (General entitlement) of FOISA.

The Commissioner also finds that the Authority failed to comply with the duty in section 15 (Duty to provide advice and assistance) by failing to provide adequate advice and assistance to the Applicant.

[7] https://www.legislation.gov.uk/ssi/2014/200

The Commissioner therefore requires the Authority to issue a revised review outcome to the Applicant, (otherwise than in terms of section 12(1) of FOISA) and providing specific advice about the information held (all in terms of section 21 of FOISA), by **6 January 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.

Jill Walker
Deputy Head of Enforcement

18 November 2026