



Scottish Information  
Commissioner  
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# Decision Notice 269/2024

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## Details of severance package of Chief Executive

Authority: CalMac Ferries Ltd  
Case Ref: 202400846

### Summary

The Applicant asked the Authority for details of the severance package to be received by its Chief Executive following the announcement of his departure. The Authority provided some information in response to the request. The Commissioner investigated and found that the Authority had misinterpreted the request. He required the Authority to reconsider the 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) and 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 3 April 2024, the Authority [issued a press release on its website](#)<sup>1</sup> stating that its Chief Executive was “stepping down with immediate effect”.
2. On 17 April 2024, the Applicant made a request for information to the Authority. Among other things, the Applicant asked how much the Authority’s Chief Executive would receive “as a result of his departure by way of severance” and whether this would be a “pay off settlement” or “money in lieu of notice or some other contractual arrangement or otherwise”.
3. The Authority responded to the request on 16 May 2024. The Authority confirmed that its Chief Executive was on garden leave for the duration of his contractual notice period and

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<sup>1</sup> <https://www.calmac.co.uk/article/10047/CEO-of-CalMac-stepping-down>

that, during this period, he would remain on the Authority's payroll and receive his contractual monthly salary and benefits during his contractual notice period.

4. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he had asked how much the Chief Executive would be given as a result of his departure and the Authority had failed to answer this question by not articulating an "amount".
5. The Authority notified the Applicant of the outcome of its review on 14 June 2024. The Authority explained that the Chief Executive was currently still employed by the Authority and receiving his normal salary and benefits only. The Authority [provided a link its annual accounts](#)<sup>2</sup>, which contained information on its Chief Executive's salary in 2022/2023, which it said provided an indication of the salary he would receive during his contractual notice period. The Authority also stated that "due to the specific circumstances", it considered that the Chief Executive's current salary should be withheld under the exemption in section 38(1)(b) of FOISA.
6. On 21 June 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because it had not answered his question about how much the Chief Executive would receive by way of severance as a result of his departure. The Applicant submitted that it should be "completely straightforward" to provide this information.

## 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 12 July 2024, 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 the application and to answer specific questions.
10. The Applicant was also provided with an opportunity to provide further comments on the application.

## Commissioner's analysis and findings

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

### ***Section 1(1) - General entitlement***

12. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is the

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<sup>2</sup> <https://www.david-macbrayne.co.uk/reports>

information held by the authority at the time the request is received. This is subject to qualifications, but these 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.

### ***Interpretation of the request***

14. The Commissioner has considered the strict wording of the original request, which asked for “how much” the Chief Executive would receive by way of severance as a result of his departure.
15. The Commissioner considers it clear from the terms of the request that the Applicant was requesting the amount of money (including benefits) the Authority’s Chief Executive was due to receive by way of severance. If there was any doubt, this was conclusively removed by the Applicant clearly stating in his requirement for review that he asked for “how much” the Chief Executive would receive, and that the Authority had failed to answer his request by not articulating an “amount”.
16. With the above in mind, the Authority’s interpretation of the Applicant’s request is difficult to understand. Instead of responding to the Applicant’s specific request, the Authority instead provided him with information relating to the Chief Executive’s salary.
17. The Commissioner agrees with the Applicant that the Authority failed to accurately interpret and respond to his request. He therefore finds that the Authority failed to comply with section 1(1) of FOISA and, in doing so, provided an incomplete response to the Applicant.
18. The Commissioner therefore requires the Authority to carry out a fresh review and to issue a revised review outcome to the Applicant.
19. During the investigation, the Authority explained that it had responded to the request based on the information it held at that time. The Authority confirmed that, at the time of the request, the Chief Executive had not received severance pay and a settlement agreement was not reached until July 2024.
20. As rehearsed earlier, in terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is the information held by the authority at the time the request is received.
21. If the Authority’s revised review outcome will state that it does not hold the information requested because a settlement agreement was not reached with the Chief Executive until after the date of the request, the Authority should provide the Applicant with appropriate advice and assistance under section 15(1) of FOISA (either disclosing the information by way of advice and assistance or advising him to make a new request for the information on the basis of changed circumstances).

## **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 failing to accurately interpret the Applicant’s request and provide a response to this, the Authority failed to comply with Part 1 (and specifically section 1(1)) of FOISA.

The Commissioner therefore requires the Authority to carry out a fresh review and to issue a revised review outcome to the Applicant, by 9 January 2025.

## **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**  
**25 November 2024**