



Scottish Information  
Commissioner  
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# Decision Notice 017/2025

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## Information relating to immigrants

Authority: River Clyde Homes  
Case Ref: 202301466

### Summary

The Applicant asked the Authority for information relating to immigrants in the area served by the Authority. The Authority informed the Applicant that it did not hold the information requested. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position. He required the Authority to reconsider the request and to 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); 15(1) and (2) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 21(1) Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 5 September 2023, the Applicant made a request for information to the Authority. Among other questions related to immigration, he asked "Where have the immigrants to Inverclyde come from?"
2. The Authority responded on 23 October 2023. It issued the Applicant with a notice, in terms of section 17 of FOISA, that it did not hold the information requested as it did not hold information on the country of origin of its tenants.
3. On 5 October 2023, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered that the

information requested could be inferred from the Authority's records of interpreter services and the five-year address history collected by the Authority from prospective tenants.

4. On 5 November 2023, the Applicant wrote to the Authority, asking why he had not received a response to his requirement for review within 20 working days.
5. On 10 November 2023, the Applicant wrote again to the Authority to express concern that he had still not received a response to his requirement for review.
6. The Authority notified the Applicant of the outcome of its review on 14 November 2023. It apologised for the delay in responding to his requirement for review and notified him that it was upholding its previous response. It explained that that it did not consider either interpretation services or address history to be an effective way to identify the country of origin of immigrant tenants. However, the Authority informed the Applicant of the languages used by its tenants.
7. On 20 November 2023, 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 because he did not agree that it could not provide the information requested and because it had failed to respond to his requirement for review in time.

## **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 19 March 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
10. The case was subsequently allocated to an investigating officer.
11. While the Applicant asked more than one question as part of his request, the Commissioner determined that he can only investigate the question set out in paragraph 1. This is because he is satisfied that this question is the only part of the request that the Applicant adequately challenged in his requirement for review and in the grounds of dissatisfaction in his application.
12. The Applicant also raised concerns with the accuracy of information he had received. As stated in many previous decisions, the Commissioner cannot comment on the accuracy of any recorded information an authority holds.

## **Commissioner's analysis and findings**

13. 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***

14. 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) are not applicable in this case.

15. The information to be given is that held by the authority at the time the request is received, as defined in 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.
16. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities.
17. The Commissioner will consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant recorded information is actually held by the public authority (or was, at the time it received the request).

#### *The Applicant's submissions*

18. The Applicant considered that language would give an indication of where immigrant tenants had come from. He also argued that the Authority required applicants for social housing and support services to supply it with previous addresses for a period of up to five years, which could include addresses prior to coming to the UK. He therefore considered that the Authority would, at least, know the last country an applicant had come from.
19. The Applicant also submitted that the Authority would require certain information from prospective tenants (e.g. why they had applied to the Authority for housing). He considered that this may reveal their country of origin (e.g. if an individual fled from persecution in a particular country).

#### *The Authority's submissions*

20. In its review outcome, the Authority argued that there were limits to relying upon address history as this would not adequately capture the country of origin of an individual born in the UK who had lived abroad before returning to the UK or an individual who had moved between multiple countries before moving to the UK.
21. In its submissions to the Commissioner, the Authority noted that it had explained to the Applicant that its position was that address history captured at the application stage was not sufficient to determine the country of origin of an immigrant.
22. Having checked with its legal department, the Authority explained that it understood that it was not obliged to hold data confirming a tenant's country of origin or nationality. It explained that when a housing applicant becomes a tenant, the address history captured at the application stage is not transferred to the tenant's record on its digital housing management system.
23. The Authority also argued that it could not readily analyse this information on a large scale as the information on previous address history is not transferred to the tenant's record in its digital housing management system. Each application would therefore need to be manually retrieved and analysed.
24. Although the Authority submitted that it does not hold the information requested, it highlighted that it had provided other information to the Applicant to give him an idea of where tenants had migrated from.

### *The Commissioner's view*

25. The Commissioner has considered the specific terms of the request, which asked for information on where “immigrants” to Inverclyde have come from. The Applicant did not provide any clarification of what he meant by “immigrants”, nor did the Authority ask for any clarification.
26. The Commissioner has considered the Applicant’s comments that information on the languages used by tenants could assist in determining their country of origin. However, given many languages are associated with multiple countries, and the fact an individual may speak languages other than those stereotypically associated with their country of origin, the Commissioner finds that there are serious limits to this method.
27. The Commissioner notes the Authority’s comments on the limits of information contained in five-year housing history. In addition to the concerns raised by the Authority, the Commissioner would observe that this method may also overlook immigrants who have been resident in the UK for more than five years.
28. In this case, the Authority appear to have interpreted the request as seeking information relating to the country of origin of immigrant tenants. Given the explanations received, and the limits of the information the Authority has stated it holds, the Commissioner is not aware of any mechanism by which the Authority could confidently identify the country of origin of all immigrant (however defined) tenants from its records.
29. However, in the absence a sufficiently clear definition of the information requested, the Commissioner does not consider it possible to fully and accurately evaluate whether any information relevant to the request is held by the Authority. (Country of origin may, for example, refer to an individual’s country of birth or the country they last resided in before migrating to the UK, while “immigrant” can be defined by reference to country of birth, nationality, or previous country of usual residence.)
30. Consequently, the Commissioner is not satisfied, based on the submissions he has received, that the Authority was entitled to issue a notice, in terms of section 17(1) of FOISA, that it did not hold any information relevant to the request. He also considers it would have been appropriate for the Authority to have sought clarification of the request.
31. The Commissioner cannot stress enough the importance of ensuring that the terms of any information request received by a Scottish public authority are clear before proceeding to respond. He would urge the Authority, and indeed all Scottish public authorities, to take steps to clarify with applicants any matter which is open to interpretation, prior to proceeding with a request (as provided for by section 15 of FOISA).
32. The Commissioner therefore requires the Authority to engage with the Applicant (in terms of section 15 of FOISA) to clarify the request (with a view to reaching a clear, mutually shared understanding of the information requested), to carry out adequate, proportionate searches for the information, to reach a decision on the basis of those searches and to issue the Applicant with a revised review outcome notifying him of the outcome (all in terms of section 21 of FOISA).

### ***Handling of the request***

33. The Applicant was dissatisfied with the time taken by the Authority to respond to his requirement for review

34. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to qualifications which are not relevant in this case.
35. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) 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.

Specifically, the Authority has failed to satisfy the Commissioner that it does not hold any information relevant to the Applicant's request. As a result, he finds that the Authority failed to comply with section 17 of FOISA.

The Commissioner also finds that the Authority failed to comply with the timescales set out in section 21(1) of FOISA.

The Commissioner requires the Authority to engage with the Applicant (in terms of section 15 of FOISA) to clarify the scope of the request, to carry out adequate, proportionate searches for the information, to reach a decision on the basis of those searches, and to notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **10 March 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.

**Cal Richardson**  
**Deputy Head of Enforcement**

**24 January 2025**