



Scottish Information
Commissioner
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Decision Notice 029/2025

Resignation of the former Chairperson

Applicant: The Applicant

Authority: Viewpoint Housing Association Ltd

Case Ref: 202400340

Summary

The Applicant asked the Authority for all information held in relation to the suspension and resignation of a former Chairperson. The Authority initially informed the Applicant that the information could not be provided as it was third party personal data, but subsequently notified the Applicant that no recorded information was held. The Commissioner investigated and found that the Authority did hold information in relation to part of the request but did not hold a resignation letter. He required the Authority to carry out a fresh review and provide the Applicant with a new review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the 2019 Order)

Background

1. On 11 August 2023, the Applicant made a request for information to the Authority. He asked for a copy of a named person's resignation letter along with all information held about their

suspension and subsequent resignation within the time period from 8 February 2019 up to and including the date of their resignation.

2. The Authority responded on 15 August 2023, providing a refusal notice under section 16 of FOISA as it considered that the information requested was third party personal information and was exempt from disclosure in line with section 38 of FOISA.
3. On 1 September 2023, the Applicant wrote to the Authority requesting a review of its response. The Applicant stated that he was dissatisfied with the response because he did not consider that he had asked for personal information, but for information in respect of the public role of the Chair of a Registered Social Landlord (RSL). He considered that a change of senior personnel within an RSL was a Notifiable Event which must be registered with the Scottish Housing Regulator (SHR) in compliance with the Regulatory Standards of Governance and Financial Management. The Applicant commented that the Chair of the governing body also has a statutory responsibility to inform SHR of governance or organisational issues. He noted that as his request was for the legitimate purpose and public interest of informing scrutiny about ongoing concerns of independent governance of an RSL he hoped the requested information could be provided.
4. The Authority notified the Applicant of the outcome of its review on 13 September 2023. It informed the Applicant that the SHR had dealt entirely with the investigation into and resignation of the previous Chair, and that it had not at the time of the original request, nor at any time since then, held any information in relation to this. The Authority reassessed its original decision to apply section 38– personal information – and replaced it with section 17 of FOISA – information not held. It also recommended that the Applicant may wish to approach the SHR with his request for information (a link to its website was provided).
5. On 1 March 2024, 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 was not satisfied that the Authority did not hold a resignation letter or any information about the circumstances of the resignation.

Validation

6. In order for an application to him for a Decision to be valid, the Commissioner must be satisfied that the Authority to whom the request for information was made is a Scottish public authority for the purposes of FOISA.
7. “Scottish public authority” is defined in section 3 of FOISA. Under section 3(1)(a)(i), any body designated by order under section 5(1) of FOISA is a Scottish public authority.
8. Under the [Freedom of Information \(Scotland\) Act 2002 \(Designation of Persons as Scottish Public Authorities\) Order 2019 \(the Order\)](#)¹ which came into force on 11 November 2019 the Scottish Ministers, using their powers under section 5(1), extended the coverage of FOISA to:
 - registered social landlords (RSLs) as defined in section 165 of the Housing (Scotland) Act 2010 (the 2010 Act) and
 - connected bodies under section 164(c) of the 2010 Act

¹ [The Freedom of Information \(Scotland\) Act 2002 \(Designation of Persons as Scottish Public Authorities\) Order 2019](#)

in relation to certain specified functions.

Description

9. The Authority is an RSL as defined by section 165 of the 2010 Act (and was at the time of the Applicant's request). The first part of the definition is therefore fulfilled.

Function

10. The Applicant asked for a copy of the resignation letter and all information held in relation to the suspension and resignation of a former Chairperson.
11. As noted above, the 2019 Order extended the coverage of FOISA to RSLs and their connected bodies in relation to certain specified functions. These are:
 - any activity in relation to the prevention and alleviation of homelessness
 - any activity in relation to the management of social housing accommodation (i.e. where an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
 - any activity in relation to the provision and management of sites for gypsies and travellers
 - supplying information to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance
12. In this case, the Commissioner is satisfied that the request seeks information related to the management and governance of the organisation and so meets the second test in the Order.
13. The Commissioner is therefore satisfied that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

Investigation

14. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
15. On 20 March 2024, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.
16. 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 how the Authority had determined that it held no information falling within the scope of the Applicant's request, and about its initial response under s38 (that would indicate relevant information was held).
17. During the investigation, further submissions were sought from the Authority on 31 May 2024. These requested information about the organisational setup and governance arrangements relating to the Board. On 9 September 2024 other submissions were requested from the Authority regarding any searches carried out to determine whether the Authority held information falling within the scope of the Applicant's request.
18. The Authority provided further submissions to the Commissioner on 4 July 2024 and 24 September 2024.
19. The Applicant was also afforded the opportunity to provide his comments, which he did.

Commissioner's analysis and findings

20. 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

21. 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.
22. 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.
23. The Applicant believed that information falling within the scope of his request must be held by the Authority as he did not find it credible that the former Chairperson would not have provided a resignation letter, or that the Authority held no further information around their "gardening leave" or circumstances of their resignation.
24. 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.
25. 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 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 authority.

The Authority's submissions

26. The Authority explained in its submissions to the Commissioner that at the time of its initial response to the Applicant, it did not hold any information relating to the former Chairperson's resignation. The Authority commented that section 38 was applied on the basis that the circumstances around a former Chairperson's resignation were confidential and that no staff within the Authority would have been given any information about it. It added, at that stage it was not recognised that (as it did not hold any information in a recordable format in relation to this) a section 17 response should have been given. The Authority acknowledged that this response might have led the Applicant to believe that information was held but was not being released to him and explained that this mistake was due to human error.
27. The Authority confirmed that both on receipt of the initial request and the requirement for review it was not considered necessary for searches to be conducted due to the confidential nature of the subject matter.
28. At the request of the Commissioner, during the investigation, the Authority carried out searches for information relating to the resignation of the former Chair of the Board and any

related letter of resignation. The Authority confirmed that no letter of resignation was held but that three other documents that related to the resignation were found.

29. The Authority stated that the Board of the Authority are volunteers constituted from tenants and other interested citizens, not employees, and as such there is no requirement for terminations periods, or indeed the process of written notice, such as a resignation letter.
30. The Authority explained that minutes and agendas are outputs from the Board and that these have been on the publication scheme for the past five years.
31. The Authority mentioned a process related to the resignation of the former Chair, which included interactions between a sub-committee of the Board, an external consultant and the SHR, but informed the Commissioner that there was no recorded information held in relation to this, and of the reasons for this.

The Applicant's submissions

32. As mentioned above, the Applicant did not agree that the Authority did not hold the Information he had requested. The Applicant did not find it credible that the former Chair did not provide a resignation letter, nor did he believe that the Authority held no other information on their "gardening leave" or circumstances of their resignation.

The Commissioner's view about the use of section 17

33. The Commissioner has considered all of the relevant submissions and the terms of the request as well as the searches that the Authority carried out during the investigation.
34. As was mentioned previously, it is not the Commissioner's role to comment on the information an authority should hold, it is to determine, whether on the balance of probabilities, the information requested by an applicant is held at the time of receipt of the request.
35. On the basis of the submissions from the Authority, the Commissioner is satisfied that information provided to a sub-committee of the Board around the time of the former Chairperson's resignation was not held by the Authority at the time of the Applicant's request.
36. It is his view though that such information (even if provided by a third party) would have been created as part of the Authority's governance arrangements and therefore created on behalf of it. As such, it would have been considered to be held by the Authority in terms of FOISA were it still to have existed at the time of the request.
37. Given the make-up of the Authority and the manner in which the Board is constituted, the Commissioner is satisfied that the Authority does not (and did not at the time of the request) hold a resignation letter from the former Chair of the Board. As a consequence, the Commissioner finds that in respect of this information, the Authority was entitled to issue a notice in terms of section 17(1) of FOISA.
38. The Commissioner is concerned, however, that the Authority initially viewed the Applicant's request in a narrow way, focussing too much on the matter of the resignation letter, and not identifying that the scope of the Applicant's request was much wider.
39. It is clear from their request that the Applicant asked for all information held about the former Chair's suspension and subsequent resignation, and included a reference to a resignation letter.

40. As a consequence of the searches undertaken by the Authority during the investigation (which were undertaken at the Commissioner's request) further information was located, which the Commissioner considers may fall within the scope of that part of the Applicant's request covering information concerning a period of leave and the subsequent resignation of the former Chairperson.
41. As such, the Commissioner must find that the Authority was not entitled to notify the Applicant, in line with section 17(1), that no information was held regarding this. He requires the Authority to consider this information and issue a revised review outcome to the Applicant, either disclosing the information or identifying a relevant exemption if it chooses to withhold it.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority complied with Part 1 of FOISA by providing a notice under section 17(1) informing the Applicant that no information was held in relation to a resignation letter from the former Chairperson.

However, by failing to carry out adequate searches and identify and locate all of the information falling within that part of the request which sought all information held about the former Chairperson's suspension and subsequent resignation, covered by the time period 8 February 2019 to the date of their resignation, the Authority failed to comply with section 1(1) of FOISA.

Furthermore, the Authority was not entitled to notify the Applicant, in line with section 17(1) of FOISA, that information was not held in relation to this part of the request.

The Commissioner therefore requires the Authority to consider the information detailed in the accompanying Appendix and issue a revised review outcome to the Applicant either disclosing the information or identifying a relevant exemption if it chooses to withhold it, by **27 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.

Euan McCulloch
Head of Enforcement

10 February 2025