



Scottish Information  
Commissioner  
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# Decision Notice 032/2025

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## Number of complaints

Authority: Queens Cross Housing Association

Case Ref: 202401092

## Summary

The Applicant asked the Authority for information on the number of complaints it had received regarding a specified property. The Authority disclosed the information requested. The Applicant believed the Authority held further information which it had not disclosed. The Commissioner investigated and found that the Authority held no further relevant information, but that it had wrongly advised the Applicant in its revised review outcome that he had no further right of appeal to the Commissioner.

## Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 21(5) and (10) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

## Background

1. On 25 July 2023, the Applicant made a request for information to the Authority. He asked a number of questions, including: "How many complaints in total have [the Authority] received in the past 12 months [regarding a named property managed by the Authority]?"
2. The Authority responded on 25 August 2023. It provided the Applicant with information on the number of complaints received.
3. On 8 September 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 Authority held further information as he had personally made more complaints than the

total number disclosed to him in response to his request. He suggested that the number of complaints logged and complaints received may not be identical and suggested that the total number of complaints received could be calculated by tallying up the complaint emails he had sent and adding this sum to any complaints made by other tenants.

4. The Authority notified the Applicant of the outcome of its review on 14 November 2023. It upheld its initial response and confirmed that it considered it had fully responded to the request.
5. On 13 January 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 for the same reasons set out in his requirement for review.
6. In [Decision 134/2024](#)<sup>1</sup> the Commissioner found that the Authority had failed to correctly interpret the part of the Applicant's request set out above in paragraph one. He required the Authority to reconsider this part of the Applicant's request and to issue him with a revised review outcome.
7. On 6 August 2024, the Authority issued a revised review outcome. It advised the Applicant of the number of individual complaints received, which, for reasons explained in Decision 134/2024, was not the number of complaints it had previously advised the Applicant of. It also outlined the searches it carried out and advised the Applicant that he had no further right to appeal.
8. On 7 August 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He indicated that he was dissatisfied with the outcome of the Authority's review because he did not believe the Authority had identified all information in scope and he did not agree that he had no further right to appeal.

## Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 12 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
11. 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 the searches carried out and the Authority's retention schedules.
12. The Applicant raised several concerns in his application to the Commissioner relating to the Authority. The Commissioner's remit is limited to whether the Authority complied with Part 1 of FOISA in its review outcome. He will therefore not consider the other concerns raised by the Applicant in his decision notice.

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<sup>1</sup> <https://www.foi.scot/sites/default/files/2024-08/Decision134-2024.pdf>

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

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

### ***Section 1(1) of FOISA – General entitlement***

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 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.
15. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority 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. 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.
17. 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 information 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 public authority.

### ***The Applicant's submissions***

18. The Applicant did not agree that the Authority had carried out adequate searches. In particular, he believed that the Authority's computer system should be able to identify the information in question.
19. The Applicant argued that the Authority's claim that emails are deleted after a year was not credible, given that emails older than a year old were disclosed in response to a subject access request he had made.

### ***The Authority's submissions***

20. The Authority explained that all "issues received" should be logged on its customer management system, which it described as the "master repository" for data. This meant that all communications received by phone, text, visits to the Authority's offices, conversations with housing officers, and email should be logged in the customer management system. It therefore considered that a search of this system would be capable of identifying all of the information relevant to the request.
21. The Authority explained that it searched this system for records registered to each tenant in the relevant block (after identifying each tenant in the block using the customer management system). These records were then manually considered to assess whether they constituted a complaint.

22. While the Authority considered a search of this system would be capable of identifying all of the information relevant to the request, it also considered whether searches of other sources could supplement these searches. It explained that phone and SMS messages are not retained and therefore could not be checked. Similarly, no records of conversations between Authority staff and customers are retained outwith the customer management system.
23. The Authority explained that emails are added to the customer management system and otherwise deleted, by an automated process, after a year. It stated that, given the timeframe of the request and the timing of the revised review outcome, these emails should not contain any information relevant to the request.
24. The Authority also submitted that, had it considered a search of these emails likely to produce any information relevant to the request, doing so would impose a significant and onerous burden on it and would exceed the upper cost limit under section 12 of FOISA.

*The Commissioner's view*

25. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that, by the end of the investigation, the Authority had taken adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request.
26. The Commissioner notes that the Applicant believes the Authority holds further information falling within the scope of his request. The Authority has explained why any further information would no longer be held.
27. The Commissioner acknowledges the Applicant's comment that some emails appear to have been retained longer than the period described. However, he notes that these emails relate to a tenant and, in line with the Authority's practice, should have been stored in the case management system (as they seem to have been in this instance).
28. The Commissioner has considered the evidence of the searches carried out by the Authority, which appear to him to be detailed and robust. Having done so, he is satisfied that these searches would have been capable of identifying any further information held by the Authority relevant to the request.
29. While the Applicant believed and expected further information relevant to his request to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.
30. In all the circumstances, the Commissioner is satisfied, to the standard of the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of the request.

***Section 21 – Review by a Scottish public authority***

31. As rehearsed earlier, the Authority advised the Applicant in its revised review outcome that he had "no further right to review or investigation."
32. The Applicant considered the Authority's position was incompatible with the intention, spirit and letter of FOI law.
33. The Authority explained that it had advised the Applicant in line with its current understanding. However, it said it was content to take guidance from the Commissioner on this matter.

34. In this case, the Authority was required by Decision 134/2024 to issue the Applicant with a revised review outcome in terms of section 21 of FOISA, within the timescales set out in the decision notice.
35. Section 21(10) of FOISA states that a Scottish public authority's response to the applicant (under section 21(5)) following a review carried out under section 21 must contain particulars about the rights of application to the Commissioner, and of appeal to the Court of Session, conferred by sections 47(1) and 56 respectively.
36. Section 21(10) of FOISA applies in the same way to a revised review outcome issued in response to an order from the Commissioner as it does to a review outcome issued in response to receiving a requirement for review from an applicant.
37. In this case, the Authority's revised review outcome did not contain particulars about the Applicant's rights of application to the Commissioner and of appeal to the Court of Session, as required by section 21(10). In fact, it advised the Applicant that he had no such further rights of appeal. In this respect, the Commissioner must therefore find that the Authority failed to comply with section 21(1) of FOISA.

## **Decision**

The Commissioner finds that the Authority generally 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 by carrying out further searches, and disclosing the results of these searches to the Applicant, the Authority complied with Part 1.

However, the Commissioner also finds that by failing in its revised review outcome to notify the Applicant of his rights of review and appeal, the Authority failed to comply with section 21(10) of FOISA.

The Commissioner does not require the Authority to take any action in respect of this failure, in response to the Applicant's application.

## **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.

**Euan McCulloch**  
**Head of Enforcement**

**11 February 2025**