



Scottish Information  
Commissioner  
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# Decision Notice 053/2025

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## Information concerning Employment Tribunal records

Authority: North Lanarkshire Council  
Case Ref: 202401054

### Summary

The Applicant asked the Authority for information relating to Employment Tribunal proceedings that involved a named staff member. The Authority considered that the cost of supplying the information would exceed the £600 cost limit and, therefore, it was not obliged to comply with the request.

The Commissioner investigated and found that the Authority had misinterpreted the time scale of 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), (3) and (4) (General entitlement); 21(1) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 8 January 2024, the Applicant made a request for information to the Authority. He asked for information relating to Tribunal cases that the Authority was defending, with specific requests for case references, dates, the names of defence counsel, the ruling and, if cases were withdrawn, any settlement figures and the names of the plaintiffs.

2. The Authority responded on 31 January 2024. It refused to comply with the request, stating that the cost of responding to the request would exceed the amount prescribed for the purposes of section 12 of FOISA. The Authority also advised the Applicant that information relating to employment tribunals from 2017 onwards was made publicly available by the Courts and Tribunals Service, and it provided him with a link to their website.
3. On 31 January 2024, the Applicant made a new, narrowed request for information. He asked the Authority for information relating to:

Employment Tribunal cases only [as opposed to all Tribunals] where the Authority was in defence, and where a named employee was the Primary Defence Counsel, including case reference numbers, dates, rulings and withdrawals, settlement figures and plaintiff names. He required the scope of the request to extend from “the mid-nineties to the mid-twenties not exceeding 2001.”
4. The Authority responded on 28 February 2024. It refused this narrowed request under section 12 of FOISA, arguing that this new request did not significantly narrow the scope of the original request and the cost of providing the information would still exceed the cost limit prescribed.
5. On the same day, the Applicant requested a review of the Authority’s response, arguing that the scope of his request dated 31 January 2024 was significantly reduced from the related, but separate, request lodged on 8 January 2024.
6. The Authority provided the Applicant with the outcome of its review on 27 March 2024. It upheld its reliance on section 12(1) of FOISA and explained that it had searched its legal time recording system, and the search results indicated that the named Primary Defence Counsel (the Counsel) had been involved in more than 4,600 employment tribunal cases. It maintained that compliance with the request would exceed £600. By way of offering advice and assistance, the Authority advised the Applicant that the Glasgow Tribunals Centre could be contacted directly if he was seeking information about decisions that were made before February 2017 in Scotland, and it provided him with a link to their website.
7. The Applicant initially wrote to the Commissioner on 31 July 2024, but he did not indicate the grounds of his dissatisfaction with the Authority’s review outcome. He subsequently wrote to the Commissioner again, on 11 October 2024, applying for a decision in terms of section 47(1) of FOISA. In this letter, the Applicant stated that he was dissatisfied with the Authority’s decision to refuse his request of 31 January 2024, under section 12 of FOISA.

## **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 11 October 2024, the Authority was notified in writing that the Applicant had made a valid application, and the case was subsequently allocated to an investigating officer.
10. 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.

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

11. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

### ***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 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. During the investigation, the Authority was challenged on its interpretation of the request, and it was asked if had taken account of the Applicant's statement that the date of the records should not exceed 2001.
15. In response, the Authority explained that it had originally interpreted the request to be seeking information from the mid-1990's to the mid-twenties and it had not taken account of the Applicant's specification that the date should not exceed 2001, as this was not a date in the mid-twenties. The Authority acknowledged that it had not sought clarification of the date range from the Applicant.
16. The Authority noted that it had since reviewed the original report that was run on its time recording system (based on the longer timescale of 1996 to 2013) which had identified more than 4,600 relevant records. On closer inspection, the Authority submitted that these records only dated from 2008, when this electronic recording system was introduced.
17. The Authority maintained that reducing the timeframe from 1996 to 2001 would still exceed the £600 cost limit. It explained that there were hundreds of employment tribunal files under the Counsel's name for each year. It submitted that as the timeframe of 1996 to 2001 was more than 20 years ago, records would be in paper files or compact discs that were not readily accessible, and this would exacerbate the administrative burden of locating fields and extracting data from them.
18. The Commissioner is not satisfied with the Authority's interpretation of the Applicant's information request. He acknowledges that the wording of the Applicant's information request contained some ambiguity, as the Applicant stated that he was seeking information from "the mid-nineties to the mid-twenties not exceeding 2001." However, the Applicant clearly stated that he did not want any records that post-dated 2001.

19. In cases where an authority is unsure what is being asked, it can, and should, under section 1(3) of FOISA and, in line with the requirements of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA](#)<sup>1</sup>, obtain clarification from the applicant.
20. In this case, at the date of the review outcome, the Commissioner considers, in all the circumstances, that the Authority failed to accurately interpret and respond to the Applicant's request.
21. The Commissioner 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. He requires the Authority to issue the Applicant with a revised review outcome.
22. If, as is likely, the Authority intends to refuse to comply with the request, in terms of section 12(1) of FOISA, then it should ensure the revised review outcome sets out the projected costs of complying with the request, and that the calculations focus solely on the information captured by the request.

## 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 **14 April 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.

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<sup>1</sup> <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>

## **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**

**27 February 2025**