



Scottish Information
Commissioner
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Decision Notice 064/2025

Benefits granted to foreign-born nationals

Authority: Social Security Scotland
Case Ref: 202400822

Summary

The Applicant asked the Authority for information on benefits granted to foreign nationals. The Authority informed the Applicant that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 3 January 2024, the Applicant made the following request for information to the Authority:
 - (1) I would like to know how many foreign-born nationals are granted benefits from [the Authority]?
 - (2) I would also like to know what kind of benefits are they entitled to and the average payment involved?
 - (3) Of particular interest would be how many of these people have been given Disability Benefits and the average payment involved?
 - (4) Also, how many of these people who have claimed a Disability Benefit whilst residing in Scotland have gone back to their country of origin and if the payment/s awarded here are now sent to foreign bank accounts?

2. The Authority responded on 12 January 2024. It informed the Applicant that it did not hold the information requested, as it did not record where applicants were born when they applied for benefits. The Authority explained that eligibility criteria for devolved benefits was set by the Scottish Government in line with policy objectives, and the Authority was responsible for delivering those benefits. Eligibility criteria was set with the intention of providing assistance to those who need it, and can be set on various factors, including residency. The Authority explained that information on all benefits, funds and grants it pays were published on the Scottish Government's [website](#)¹, including an overview of each benefit and explanation of who can apply.
3. On 17 January 2024, the Applicant wrote to the Authority requesting a review of its decision as he disagreed with the Authority's response. The Applicant believed it was wholly incredulous for the Authority to state that it did not hold the information. He questioned the suggestion that the Authority did not know where individuals, who were claiming benefits, came from, and that any foreign national could just turn up in Scotland and claim benefits without indicating where they had come from.
4. The Authority notified the Applicant of the outcome of its review on 13 February 2024, upholding its original decision with modification. The Authority explained that it did not ask where someone was born as part of the application process. As place of birth was not collected, the Authority did not hold information on how many foreign-born nationals were granted benefits. The Authority further explained that an applicant must satisfy a number of residence and presence criteria to be eligible for one of its benefits, and those criteria differed depending on an applicant's personal circumstances: there were special rules for some European nationals and some exceptions which applied to specific categories of people. While the Authority may capture the country an applicant moved to Scotland from and what their nationality was, it did not capture their place of birth.
5. The Authority acknowledged that its original response ought to have explained that the request was being refused under section 17(1) of FOISA and modified its review response to reflect this.
6. On 9 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, in his view, it had attempted to block his request for the information which, he believed, was clearly held and was accessible to the Authority.

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 7 August 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.
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 this application and to answer specific questions. These focussed on the steps taken by the Authority to establish whether it held the information requested.

¹ <https://www.mygov.scot/browse/benefits>

Commissioner's analysis and findings

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

Whether the Authority held the information requested

11. 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.
12. 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 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.
13. 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. He 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 on the information held

14. The Commissioner has taken account of the arguments in both the Applicant's requirement for review and his application (as rehearsed above), in which he explains why he believes the Authority holds the information requested.

The Authority's submissions on the information held

15. In its submissions to the Commissioner, the Authority explained the steps it had taken to establish that it did not hold the information requested:
 - The Authority understood the term "foreign-born nationals" to mean individuals in receipt of benefits whose place of birth was outwith Scotland or the United Kingdom.
 - The Scottish Ministers do not require information on place of birth as part of the application process for benefits. The Authority does not collect this information from individuals who make applications for benefits, as their birthplace has no relevance to their eligibility for any benefit paid by the Authority.
 - The Authority provided evidence showing that it had consulted its subject matter experts for the benefits it pays, to confirm what information clients must provide for each of the benefits. In all cases, it was confirmed that a client's place of birth was not a factor considered when assessing eligibility for any benefit.
 - A further check was undertaken of the Data Dictionary for the client records system, where the place of birth data field would be recorded, if held. The Authority confirmed

that the Data Dictionary records all of the data fields in the system and place of birth is not a data field in the Data Dictionary.

- The Authority provided the Commissioner with sample copies of its client application forms to evidence that this information is not collected.
 - The Authority submitted that it makes available to staff dealing with FOI requests, a significant amount of guidance via its intranet, and provided supporting evidence of this.
16. The Authority confirmed that no further searches were carried out beyond the enquiries described above. It submitted that searches of systems, other than the client records system, which currently holds more than one million records, were not required as the client records system is the only place where such information would be stored, if held.
17. The Authority explained that there was no legal basis or legal duty for it to hold information on the place of birth of an individual in receipt of benefits, and that particular information was not required for the Authority to process any of the benefits it pays.

The Commissioner's views on the information held

18. The Commissioner has considered all relevant submissions and the terms of the request, including the Authority's explanation of the steps taken to establish whether it held the information requested.
19. The Commissioner has taken regard of the responses provided by the Authority's subject experts, all of which confirmed that place of birth is not information that is captured. He has also considered the Authority's submissions that its client record system holds no data field for place of birth.
20. Following examination of the sample copies of application forms provided by the Authority, the Commissioner is satisfied that place of birth is not a data field present in any of these. While some information regarding nationality and/or previous country of residence is asked for in certain application forms, this is not information that meets the terms of the Applicant's request.
21. Having considered the submissions from the Authority, the responses provided (as evidence) from the Authority's subject experts and the sample copies of application forms provided, the Commissioner is satisfied that the Authority does not hold, and does not require to hold, any information on country of birth in relation to the benefits it pays. In the Commissioner's view, the Authority satisfactorily explained its position on this to the Applicant, both in its initial response and review outcome.
22. The Commissioner therefore concludes that the Authority does not hold the information requested, and was therefore entitled to respond to the Applicant's request in terms of section 17(1) of FOISA.

Decision

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

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.

Jill Walker
Deputy Head of Enforcement

17 March 2025