



Scottish Information
Commissioner
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Decision Notice 075/2025

Information regarding a named individual

Authority: East Ayrshire Council
Case Ref: 202500080

Summary

The Applicant asked the Authority for certain information regarding a named individual. The Authority informed the Applicant it did not hold the information. The Commissioner investigated and was satisfied the Authority did not hold the information requested.

Background

1. On 8 November 2024, the Applicant made a request for information to the Authority. He asked for:
 - (1) All and any information held by the Authority amounting to policy or guidance in relation to external activities undertaken by the Authority's employees, such as may have been in force at any time since 1 January 2023.
 - (2) All and any information held by the Authority in relation to external remuneration and benefits in kind (travel, hospitality, gifts, gratuities, &c) received by a named staff member from any person or organisation since 1 January 2023.
 - (3) All and any information held by the Authority in terms as to any permission sought from or granted by the Authority in relation to a named staff member's involvement in a specified documentary.
 - (4) All and any information held by your authority in as to any relationship between the named staff member and any other employee of the Authority's Community Justice Social Work (CJSW) department.
2. The Authority responded on 14 November 2024. It explained that the named individual left the employment of the Authority in February 2023 and issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested. It also

provided the Applicant with an excerpt from its employee code of conduct policy document, relating to work outside the Authority.

3. On 19 November 2024, the Applicant wrote to the Authority, requesting a review of its decision. He stated that he was dissatisfied with the decision for the following reasons:
 - While he noted the Authority's position that the named individual left his employment with the Authority in February 2023, his request concerned information held from 1 January 2023. He expected the Authority would retain records of external receipts or benefits to former Authority employees for some time following their employment being terminated.
 - He expected the Authority to maintain personnel records in relation to former employees such as the named individual and he was aware it was not uncommon for local authorities to ask prospective employees to name members or officers of that authority to whom they may be related.
4. The Authority notified the Applicant of the outcome of its review on 23 November 2024. It advised it considered the Applicant's requirement for review related to parts (2) and (4) of his request and responded in the following terms:
 - for part (2), it explained that it carried out a review of records and confirmed that it did not hold any information regarding external remunerations or benefits in kind received by the named individual
 - for part (4), it explained that it carried out a review of records and confirmed that it did not hold any information that suggested that the named individual was related to, or in a relationship with, any member of the CJSW department.
5. On 6 January 2025, 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 it was unclear whether the Authority's position was that the named individual was no longer an employee of the Authority, and that it accordingly did not hold the information requested, or whether its position was that it had interrogated records to establish whether information falling within the scope of the request may be held.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 3 February 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
8. 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 by the Authority. The Authority provided comments.
9. The Commissioner agrees that the Applicant's requirement for review was limited to challenging the Authority's responses to parts (2) and (4) of his request. The Commissioner's investigation will therefore be limited to these parts of the Applicant's request and will not consider the other parts of his request further.

Commissioner's analysis and findings

10. 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

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 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.
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 lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority.
14. The Commissioner also considers, 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

15. The Applicant provided a copy of information available on a social media platform that indicated the named individual referred to in his request was still employed by the Authority.
16. The Applicant submitted that, even if the named individual was no longer an employee of the Authority, he expected the information requested in parts (2) and (4) of his request to have been retained.
17. As stated above, the Applicant considered it unclear whether the Authority's position was that the named individual was no longer an employee of the Authority, and that it accordingly did not hold the information requested, or whether its position was that it had interrogated records to establish whether information falling within the scope of the request may be held.

The Authority's submissions

18. For part (2) of the Applicant's request, the Authority explained that any information on external remuneration and benefits in kind would be recorded in the named individual's HR file. Having reviewed the relevant file, the Authority confirmed it had identified no information relevant to the request.
19. For part (4) of the Applicant's request, the Authority explained that it only recorded the spouse/next of kin of employees. It consequently considered information of this nature the only information that could fall within scope of part (4) of the request. It confirmed it checked

the staff directory to confirm that the spouse/next of kin of the named individual was not a member of the CJSW team.

20. Part (4) of the Applicant's request refers to "any relationship" between the named individual and any other employee of CJSW, while his requirement for review refers to his belief that prospective employees of the Authority would be asked to name members or officers of the Authority "to whom they may be related".
21. In the circumstances, the Commissioner considers it appropriate to treat "any relationship" as being broader than spouse or next of kin.
22. During the investigation, the Authority was therefore asked to explore whether any further information on relationships could be held – particularly whether any relationship between the named individual and any member of the CJSW team had been recorded as a conflict of interest.
23. The Authority responded that any documentation regarding employment issues is recorded in the HR file of the relevant employee. Should an employee, in the course of their employment, have a conflict of interest recorded by their Head of Service, then it would be logged in their HR file.
24. In this case, the Authority confirmed that it had reviewed the named individual's HR file and there was no information that indicated they had a relationship with any CJSW employee. That is, their spouse/next of kin details were checked and, in addition, there was no information in their HR file regarding another relationship or conflict of interest.
25. The Authority explained that it also checked with the Head of Service for CJSW and the Head of Service for the department the named individual worked in, both of whom advised that they were not aware of a relationship between the named individual and any CJSW employee and that they did not have any such details recorded.

The Commissioner's view

26. Having considered all relevant submissions, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish if the information requested was held. He is satisfied that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant.
27. While the Applicant may have believed and expected the information requested to be held by the Authority, the Commissioner is satisfied 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
28. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Section 15 – Duty to provide advice and assistance

29. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
30. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice and assistance in a particular case) it conforms with the Scottish Ministers' Code of Practice on the discharge of functions by

Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 ([the Section 60 Code](#))¹.

31. In this case, the Applicant considered it unclear whether the Authority simply maintained it held no information since it no longer employed the named individual, or whether it had carried out searches to establish that it held no information.
32. The Commissioner has considered the terms of the Authority's initial response and review outcome.
33. The Authority's initial response is clear that the named individual left the employment of the Authority in February 2023. This is reiterated in the Authority's review outcome.
34. The Authority's review outcome directly responds to the specific matters raised by the Applicant in his requirement for review. In other words, it addresses the Applicant's point regarding part (2) of his request covering the period from January 2023 (i.e. prior to the named individual leaving the employment of the Authority) and his point regarding part (4) of his request, that he would expect the Authority to have maintained personnel records in relation to former employees. In response to both points, the Authority stated that it had "carried out a review of records".
35. In the circumstances, the Commissioner is satisfied that the Authority adequately explained that it did not hold the information requested and that it arrived at this position on the grounds both that the named individual was no longer employed by the Authority and that it had identified no information relevant to the request after reviewing its records. In doing so, the Commissioner accepts that the Authority complied with its duty under section 15 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.

Euan McCulloch
Head of Enforcement

25 March 2025

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>