



# Decision Notice 215/2024

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## Compensation paid for vehicle damage

**Authority: Glasgow City Council**

**Case Ref: 202200851**

### Summary

The Applicant asked the Authority for information relating to compensation claims for damage caused to vehicles hitting potholes. The Authority provided the information requested, but the Applicant believed that the Authority had misinterpreted part of his request. The Commissioner investigated and found that the Authority had misinterpreted part of the request. He required the Authority to reconsider part of the Applicant's request and issue a revised review outcome.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (3), (4) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 7 May 2022, the Applicant made a request for information to the Authority. Among other things, the Applicant asked for:  
  
"How many claims have been made against [the Authority] for damage incurred to cars as a result of hitting potholes and for how much in cost? (Over the last three financial years)"
2. The Authority responded on 20 June 2022, providing the Applicant with the number of claims for the specified period.
3. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority's decision because it had only provided the number of claims for the specified period when he had also requested the cost of the claims made.

4. The Authority notified the Applicant of the outcome of its review on 8 July 2022. The Authority stated that it had, when responding to a subsequent question of his as part of its initial response, provided the Applicant with details of compensation that had been paid out. However, the Authority explained that, if the Applicant was requesting the total cost of handling claims for damage incurred by hitting potholes, it was refusing his request in terms of section 12(1) of FOISA as it considered the cost of complying would exceed the specified limit of £600.
5. On 31 July 2022, 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 as it had again misinterpreted his request. The Applicant explained that he was seeking how much had been claimed from the Authority for pothole damage over the period specified in his request, not the total cost of handling all such claims.

## **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 27 September 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The case was subsequently allocated to an investigating officer.

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

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

### ***Section 1(1) - General entitlement***

10. 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.
11. 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***

12. The Commissioner has considered the strict wording of the original request, which asked for:  
"How many claims have been made against [the Authority] for damage incurred to cars as a result of hitting potholes and for how much in cost? (Over the last three financial years)"
13. As rehearsed earlier, the Authority's initial response did not address the second part of the request. In its review outcome, the Authority refused to comply with the request, in terms of section 12(1) of FOISA, if the Applicant was requesting the total cost of handling claims for damage incurred by hitting potholes.

14. On 25 July 2022, prior to submitting his appeal to the Commissioner, the Applicant emailed the Authority to advise that he was dissatisfied with its review outcome. In his email, the Applicant explained that he was requesting the total claimed (as opposed to paid out) in compensation over the specified period.
15. On 23 August 2022, following the Applicant's appeal to the Commissioner, the Authority responded to the Applicant's email. The Authority explained that it could not provide the total amount of compensation claimed for the specified period as to comply with the request would exceed the upper cost limit under FOISA. However, by way of advice and assistance, the Authority provided the Applicant with the total amount of compensation claimed relating to outstanding cases only.
16. In its submissions to the Commissioner, the Authority noted that it could have resolved the interpretation of the request at an earlier stage by simply asking the Applicant to clarify what he meant by "how much in cost?". However, the Authority submitted that it did not consider its interpretation was unreasonable and that there had simply been a misunderstanding.
17. While the Commissioner considers that the Applicant's request could have been clearer, the Authority did not take steps to clarify it.
18. 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.
19. 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.
20. 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 therefore requires the Authority to issue the Applicant with a revised review outcome.
21. As rehearsed earlier, the Authority, after the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA, provided the Applicant, by way of advice and assistance, with some information relevant to his request and indicated that to comply with the request would exceed the upper cost limit under FOISA.
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.

## 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.

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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>

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 **15 November 2024**.

## **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.

**David Hamilton**  
**Scottish Information Commissioner**

**1 October 2024**