



Scottish Information  
Commissioner  
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# Decision Notice 236/2024

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## Twinning with Gaza

Authority: City of Edinburgh Council

Case Ref: 202200823

### Summary

The Applicant asked the Authority for the names of people and organisations that wrote to it in connection with a proposal to twin Edinburgh with Gaza and for correspondence relating to the proposal. The Authority withheld the information requested under various exemptions in FOISA. The Commissioner investigated and found that the Authority had not satisfied him that it had correctly interpreted the request or identified all information falling within the scope of the request. He required the Authority to issue a revised review outcome.

### Relevant statutory provisions

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

### Background

1. On 30 March 2022, the Applicant made a request for information to the Authority. He asked for:
  - 1) “the names of all individuals and organisations external to [the Authority] (except for constituents contacting their councillors) who contacted [the Authority] or its officers between 1 March 2022 and 29 March 2022 ... regarding Item 7.8 on the agenda of the Policy and Sustainability Committee for Tuesday 29 March - Petition for Consideration: Twinning Edinburgh with Gaza City.
  - 2) “the content of all communications ... that were received by [the Authority] or its officers on the matter referred to above, in the timeframe referred to above and that present

views or raise points regarding the petition to twin Edinburgh with Gaza. I am not seeking the content of communications of a purely administrative or transactional nature, such as email acknowledgements, but I am seeking material that conveys or indicates a wish to convey a substantive view or concern about the agenda item, either to be presented at the Committee meeting by way of a deputation or otherwise, or to the [Authority] or its officers in advance of the meeting. Please provide the name of the individual and/or organisation that sent each communication whose content you provide in response to this question.”

2. The agenda for the Policy and Sustainability Committee (the Committee) meeting on 29 March 2022 is published on the Authority’s [website](#)<sup>1</sup>.
3. The Authority responded on 29 April 2022, refusing to provide the information requested as it considered it to be exempt from disclosure under (variously) sections 30(b)(ii), 30(c) and 38(1)(b) of FOISA. The Authority explained why it considered the exemptions applied, taking account of the public interest where required.
4. On 20 May 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not consider that the Authority properly applied the exemptions claimed or correctly considered the public interest test.
5. The Authority notified the Applicant of the outcome of its review on 21 June 2022, upholding its original decision.
6. On 25 July 2022, 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 he did not accept that the claimed exemptions applied and, insofar as they may apply, he did not agree that the public interest favoured withholding the information requested.

## 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 29 August 2022, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, 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 primarily related to the Authority’s justification for applying the claimed exemptions and the searches the Authority undertook in response to the request.
10. During the investigation, the Authority reconsidered its position and applied section 38(1)(a) of FOISA to some of the information requested, which it disclosed to the Applicant under the

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<sup>1</sup> <https://democracy.edinburgh.gov.uk/documents/g6094/Agenda%20frontsheet%2029th-Mar-2022%2010.00%20Policy%20and%20Sustainability%20Committee.pdf?T=0>

United Kingdom General Data Protection Regulation. The Authority also disclosed to the Applicant some of the information it had previously withheld under FOISA.

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

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

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

12. 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 are not applicable in this case.
13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is not necessarily to be equated with information an applicant believes the authority should hold.

### ***The scope of the request***

14. During the investigation, the Authority revised its approach and came to the view that it had previously interpreted the scope in an overly broad manner.
15. The Authority had understood the request to cover any information around Gaza and/or Israel it held which had originated from the proposal of the twinning and which had been received over a period of three months.
16. However, during the investigation, the Authority came to the view that the Applicant's questions only covered "views and concerns on the agenda item (twinning) ahead of the meeting of Policy Committee" for the period between 1 and 29 March 2022.
17. Following disclosure of some information by the Authority during the investigation, the Applicant commented that he was surprised to see what appeared to be substantive submissions assessed as being outside the scope of his request.
18. The Applicant explained that his request was quite broad, but it was designed to relieve the Authority of the burden of dealing with a large number of items (e.g. email acknowledgments) of no significance.
19. Having considered the precise terms of the Applicant's request and the withheld information, the Commissioner agrees that the Authority correctly deemed some information outwith the scope of the request, e.g.:
  - routine messages of a purely administrative or transactional nature
  - an internal document
  - documents outwith the timeframe specified for the request.
20. However, the Commissioner has identified several examples where the Authority incorrectly deemed information outwith the scope of the request, including:
  - emails expressing an interest in speaking with the Committee

- commentary on the petitioner, Hamas and Israel, that indirectly criticises the petition
  - information relating to twinning, including a vision for twinning; descriptions of aspirations the writer associates with twinning; arguments in favour of and benefits of twinning; commentary on twinning and human rights and the legality of twinning; a newspaper article on twinning; and arguments about the accuracy of statements made by supporters of twinning
  - responses to the petition being removed from the committee's agenda.
21. The Commissioner considers all of the above to convey a substantial view or concern on the agenda item or to demonstrate an interest in doing so.
  22. For the avoidance of doubt, the Commissioner has no locus to comment on the merits, or lack thereof, of any views expressed in the information requested. In assessing the views as substantial, the Commissioner simply notes that they are what he considers to be "substantive" views expressed to the Authority within the meaning of the Applicant's request.
  23. The Authority also withheld as outwith the scope of the request several comments that did not directly address the petition.
  24. However, the Commissioner is satisfied that these comments were intended to be read alongside more direct commentary on the petition and to buttress or defend the writers' comments. Therefore, the Commissioner considers these comments to be in scope. These comments include, e.g.:
    - information about the writers' organisations, explaining the relevant expertise of the organisation
    - commentary on Zionism, presented as a response to potential criticism of the writer's position
    - commentary on the demographics of Gaza, presented as a response to potential criticism of the writer's engagement in the issue.
  25. In all of the circumstances, the Commissioner does not consider that the Authority has interpreted the Applicant's request correctly. 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.
  26. In cases where a request may be open to interpretation, section 1(3) of FOISA allows a public authority to seek clarification from an applicant, to enable it to identify and locate the information being requested. Depending on the circumstances, particularly where there is a risk of the request being misinterpreted (and the applicant thus being disadvantaged in the exercise of his or her rights under FOISA), there may also be a duty to seek such clarification, in line with section 15(1).
  27. The Commissioner cannot stress enough the importance of ensuring that the terms of any information request received by a Scottish public authority are clear before proceeding to respond. He would urge the Authority, and indeed all Scottish public authorities, to take steps to clarify with applicants any matter which is open to interpretation, prior to proceeding with a request.

*Information falling within the scope of the request*

28. In considering whether a Scottish public authority has complied with the requirements of FOISA or the EIRs in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
29. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.
30. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).
31. In this case, notwithstanding the opportunity given to provide comments and the substantial volume of information it identified, the Commissioner is not satisfied that the Authority has achieved this.
32. When the Commissioner requested comments from the Authority, he asked for a description of the searches carried out, including the records which were searched and any keywords and other search parameters used. While the Authority outlined which colleagues it asked to conduct searches, it did not describe these searches in sufficient detail to satisfy the Commissioner that adequate searches were conducted.
33. In all the circumstances, the Commissioner cannot therefore conclude that the Authority identified all relevant information falling within the scope of the request.
34. Consequently, the Commissioner requires the Authority to fully reconsider the Applicant's request and issue him with a revised review outcome (in terms of section 21 of FOISA). In doing so, the Authority must ensure it has identified the correct scope of the request and carry out fresh searches (which must be adequate and proportionate) for the information requested.
35. The Commissioner notes that when the Authority provided a further response to the Applicant during his investigation, it did not provide separate responses for both parts of his request.
36. When issuing its review outcome, the Commissioner therefore requires the Authority to also ensure that it provides clear and specific answers to both parts of the Applicant's 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.

Specifically, in failing to accurately interpret the Applicant's request and in failing to satisfy the Commissioner that it correctly located and identified all information relevant to it, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA (and specifically section 1(1)).

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **12 December 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.

## **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.

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

**28 October 2024**