



Scottish Information
Commissioner
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Decision Notice 003/2024

Names and correspondence addresses of registered landlords for properties at two postcode addresses

Authority: City of Edinburgh Council
Case Ref: 202101479

Summary

The Applicant asked the Authority for the publicly available information in the landlord register for all landlords registered for properties at two postcode addresses. The Authority refused to provide the information on the basis that it was publicly available from the online Scottish Landlord Register. Following an investigation, the Commissioner was satisfied that the information was exempt from disclosure under section 25(1) of FOISA as it was otherwise accessible to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner)

Antisocial Behaviour etc. (Scotland) Act 2004 sections 82 (Registers) and 88A (Access to registers)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 6 September 2021, the Applicant made the following request for information to the Authority:

Please send me an extract from the landlord register for all landlords registered at [two specified postcode addresses].

Please send me all information publicly available under the FOI Act:

The 2004 Act specifies that the following information shall be made publicly available:

- the name(s) and correspondence address(es) of private landlords or agents who act on the owner's behalf*
 - whether a landlord is registered or if their application is awaiting approval*
 - if a landlord's registration has been refused or removed*
- the local authorities the owner or agent is registered with*
- whether there are any outstanding Repairing Standards Enforcement Orders for the property.*

The local authority may give out additional information, such as the owner or agent's home or office address, and addresses of other properties the owner lets.

2. Having received no response to his request within 20 working days, the Applicant wrote to the Authority on 5 October 2021 requesting a review, given its failure to respond.
3. The Authority notified the Applicant of the outcome of its review on 2 November 2021 and apologised for its failure to respond within the statutory timescale. It refused to provide the information requested as, in terms of section 25(1) of FOISA, this information was available online from the [Scottish Landlord Register](https://www.landlordregistrationscotland.gov.uk/)¹ (the Register). The Authority provided the corresponding weblink and explained that, to access the names and contact details of any registered landlords, an individual search would be required for each property at these two postcode addresses.
4. The Authority also explained that the Landlord Registration website had been designed to ensure that searches were directed towards specific properties or landlords, rather than to enable the gathering of lists, for example rental properties (associated with a registered landlord) in a given area, details of all landlords in a given area, or multiple properties owned by the same landlord. It further explained that the Scottish Parliament had decided that access to the Register should be limited to allow interested persons to check whether a particular person was registered as a landlord, or to establish whether a landlord was registered to a particular property and to find their contact details, but also to prevent more general trawling of the Register, a position which, the Authority stated, was supported by the Commissioner ([Decision 063/2011](https://www.itspublicknowledge.info/decision-0632011))².
5. For other information that was not publicly available in the Register, the Authority withheld this under the exemption in section 30(c) (Prejudice to effective conduct of public affairs) of FOISA, with explanation.
6. On 29 November 2021, 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 because, if the information was held and was publicly available, he failed to see why the Authority could not simply provide a spreadsheet for that part of the Register. The Applicant believed that, while the Authority was not denying him access to

¹ <https://www.landlordregistrationscotland.gov.uk/>

² <https://www.itspublicknowledge.info/decision-0632011>

public information, its response was merely to frustrate his efforts by imposing a time-consuming and wholly unnecessary hurdle.

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. The Authority was notified in writing on 13 December 2021 that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
9. On 13 December 2021 and on 27 June 2022, the Applicant provided his comments on why it was important for him to obtain the names and contact details of those responsible for the properties in question.
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. These focused on the Authority's justification for relying on section 25(1) of FOISA for the publicly available information, and on section 30(c) (including any public interest considerations) for the information that was not publicly available. The Authority was also asked to confirm what type(s) of information fell under these two categories.
11. The Authority provided its submissions to the Commissioner on 11 November 2022.

Commissioner's analysis and findings

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

Information under consideration

13. 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.
14. The Authority was asked to explain what information was publicly available in the Register. In response, the Authority explained that, for an address with a registration attached, a search of the Register would provide the name of the landlord for that address, any joint owner (if registered) or an agent (if one was disclosed). The entry would also provide a contact address (either a contact address for the landlord themselves, the agent address or an address the landlord could be contacted at). For properties that did not feature on the Register, the search would display a message that "No details are available for the property".
15. The Commissioner notes that the Applicant's dissatisfaction, in this case, focuses on the Authority's refusal to provide him with the publicly available information in the Register, i.e. the names and contact details of the landlords registered to each of the properties at the specified postcode addresses, as contained in the Register.

16. The Commissioner is satisfied that the Authority holds the information requested, i.e. the names and contact details of the registered landlords for the two postcode addresses stated in the request, and which are contained in the Register.
17. The Applicant has raised no dissatisfaction with the Authority's decision to withhold, under section 30(c) of FOISA, any information which was not publicly available, and so the Commissioner will not consider that matter further within this decision.

Section 25(1) – Information otherwise accessible

18. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.

The Applicant's submissions

19. In his application to the Commissioner, although the Applicant did not dispute that the information he was seeking was publicly available, he was dissatisfied that he would be required to carry out a search for each individual property listed for each of the two postcodes stated in his request.
20. In his submissions, the Applicant stated that the fundamental principle behind this case was whether an authority could claim an FOI exemption that "information [was] available" by publishing that information behind a portal that could only be accessed a line at a time. He argued that information, published behind what he described as a "time-consuming portal", was not freely available information, and was an effort to subvert freedom of information by making it impractical to liberate the information.
21. The Applicant explained why it was important to him to obtain the names and contact details of the responsible property owners, in order to resolve a health and safety issue. He believed that there was a clear public interest in releasing this part of the Register which, he argued, was not "trawling" but was a very specific forensic request.
22. In the Applicant's view, the "trawling" amendment to the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)³ (ABSA) was a "clear cop-out" by the legislators, which permitted one-to-one engagement with tenant and landlord but prohibited wider research into the power imbalance between the landlord sector and wider body of renters, and the influence of multiple ownership and foreign ownership which, he believed, was driving the re-feudalisation of Scotland.

The Authority's submissions

23. The Authority confirmed that it wished to maintain reliance on section 25(1) of FOISA for the names and contact details of the registered landlords, for the properties at the two postcode addresses stated in the request. It explained how the information requested could be accessed by the Applicant, and why it considered the information to be reasonably obtainable:
 - By entering a postcode into the "rental property postcode" search function in the Register, a list of all addresses at that postcode was provided. The user could then click on each listed address individually, and this would reveal whether the property

³ <https://www.legislation.gov.uk/asp/2004/8/part/8>

had a registered landlord or, if a registration did not feature for the property, a message would display advising that no details were available for the property.

- For properties with a registration attached, the search would display the name of the landlord, any joint owner (if registered) or an agent (if disclosed). It would also give a contract address (either for the landlord themselves, the agent, or an address the landlord could be contacted at).

24. The Authority explained that for the two postcodes specified in the request, there were 61 and 72 searchable addresses on the Register respectively.
25. As the Applicant had requested the names and correspondence addresses of private landlords or agents acting on the owner's behalf, the Authority submitted that this information was available via the search function on the Register, i.e. through individual searches of each property listed for each of the two postcodes.
26. The Authority explained that, in its review outcome, it had provided information on how to use the Register's search function and, in addition, it had offered to assist the Applicant with the search if he experienced any difficulty in doing so.
27. The Authority submitted that the functionality of the Register, according to the wishes of the Scottish Parliament, was to enable interested persons to check whether a particular person was registered as a landlord, or to establish whether a landlord was registered to a particular property and find their contact details. It was also to prevent more general "trawling" of the Register, a position which, the Authority stated, was supported by the Commissioner in previous decisions.

The Commissioner's view

28. The Commissioner notes that the Applicant has not disputed that the information (the names and contact details of the registered landlords) was publicly available, rather that his dissatisfaction focused on the Authority's decision not to provide him with the information in response to his request (because it was otherwise accessible to him), thereby requiring him to conduct separate searches of the Register for each property to obtain the information he was seeking.
29. In this case, the Authority withheld the publicly available information in the Register under the exemption in section 25(1) of FOISA, on the basis that it was otherwise accessible to the Applicant. The Commissioner must reach a decision on whether the Authority was entitled to do so.
30. The Commissioner understands that, by searching the Register for a rental property registration using a postcode, this provides information on who owns the property, if anyone manages the property on their behalf, which local authority area the property is in and a contact address for that property.
31. In order to get a view on how reasonably obtainable the publicly available information requested was (i.e. the names and contact details of the registered landlords), the Investigating Officer carried out a sample search of 10 addresses at one of the postcodes stated in the request. In doing so, the Investigating Officer found that, for each property search, the postcode had to be entered in the first instance, then an address selected from the dropdown list in the search results. For some of these searches, the user was also asked to verify that they were "not a robot".

32. The results of this sample search identified that for two addresses, no registration details were available for that property (as the property was not in the Register). For the remaining eight address, the results showed the information described in paragraph 30 above, where those fields were populated.
33. The Investigating Officer noted that this search of 10 addresses took seven minutes, which included time to screenshot and paste the information for each address into a separate document.
34. The Commissioner has considered the findings of the sample search of the Register carried out by the Investigating Officer. It is clear that, in order to obtain the names and contact details of any registered landlords for the properties at each of the two postcode addresses in question using this online search system, an individual would have to search each of the 133 properties individually. As far as the Commissioner can determine, this is the only way to establish which of these properties have a registered landlord associated with them and the names and contact details of those landlords.
35. The Commissioner notes, however, that it appears to have been relatively easy for the Investigating Officer to obtain the publicly available information in the Register for 10 properties, and that the time required to do so equated to less than one minute per property. On that basis it would take in the region of 2 hours and 15 minutes to obtain the information for the 133 properties at the two postcode addresses.

Sections 82 and 88A of ABSA

36. ABSA provides the statutory basis for the existence of and access to the Register. Section 82(1) requires each local authority to maintain a register of landlords in its area.
37. Section 88A of ABSA makes provision for public access to the Register, and is set out in full within the Appendix to this decision.
38. Section 88A(1)(a) indicates that, on the application of any person in relation to a particular house, a local authority shall provide the applicant with:
 - confirmation of whether any application for registration relating to the house has been made, but has not yet been determined;
 - the name of any owner of the house;
 - the name of any person who acts for the owner in relation to a lease or occupancy arrangement to which the house is subject;
 - the address to which correspondence with the owner or their agent should be directed; and
 - details (where relevant) of certain types of decision taken by the local authority.
39. On the application of any person in relation to a particular person, the local authority shall confirm whether that person is registered in its Register (section 88A(1)(b)(i)).
40. Section 88A(2) and (3) go on to state that a local authority *may*, on the application of any person, provide that person with other such information from its Register as it thinks appropriate, subject to such conditions as the local authority thinks appropriate.

41. Section 88A(4) indicates that, notwithstanding the terms of section 88A(1), an authority may withhold information where it considers that providing the information would be likely to jeopardise the safety or welfare of any person or the security of any premises.
42. The Commissioner notes that Section 88A of ABSA was inserted via an amendment within section 176(7) of the [Housing \(Scotland\) Act 2006](#)⁴: (HSA). Understanding of the rationale for the insertion of this provision (along with the associated repeal of an earlier unqualified requirement that the Register be made available for public inspection) can be gained from the explanatory notes to HSA, which state (at paragraph 198):

Public access to information contained in a local authority's register of private landlords is controlled, so that the access is geared to the purposes for making that information available to the public and does not support other undesirable purposes such as trawling the internet based register.
43. The provisions discussed above, which are given practical effect through the Landlord Registration website, therefore, grant access to information only in circumstances in relation to specific properties or individual landlords where they are identified by the searcher (subject to any decision to withhold particular details in line with section 88A(4) of ABSA). Under the provisions of ABSA, it is at the *discretion* of the local authority to decide whether to give out additional information over and above that which can be readily obtained via the Landlord Registration website.
44. It is clear to the Commissioner that the Landlord Registration website has been designed to ensure that searches are directed towards specific (and presumably known) properties (or landlords), rather than allowing a list of (for example) landlords for a particular area to be gathered.
45. The Commissioner is therefore of the view that, *under ABSA*, the Authority has no obligation (but may have the discretion) to provide any additional information to the Applicant in response to his request. However, what the Commissioner must focus on is whether the Authority was obliged, *under FOISA*, to provide that information which is publicly available in the Register to the Applicant in response to his request.
46. The Commissioner has fully considered the submissions from both parties, the information captured by the request, the sample searches carried out by the Investigating Officer and the relevant parts of ABSA and HSA. He concludes that the information requested (the names and contact details of the registered landlords for the properties at the two postcode addresses) was – and remains – reasonably obtainable by the Applicant through the Landlord Registration website, other than by requesting that information under section 1(1) of FOISA.
47. The Commissioner finds that the publicly information requested in this case was exempt from disclosure under section 25(1) of FOISA and that the Authority was not obliged to provide that information to the Applicant in response to his request.

⁴ <https://www.legislation.gov.uk/asp/2006/1/section/176>

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

9 January 2024

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - ...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);

- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

Antisocial Behaviour etc. (Scotland) Act 2004

82 Registers

- (1) Each local authority shall prepare and maintain a register for the purposes of this Part.

...

88A Access to register

- (1) Each local authority shall, on the application of any person ("the applicant"), in relation to –
 - (a) a particular house, provide the applicant with –
 - (zi) confirmation of whether any application relating to the house has been made in accordance with section 83 but has not yet been determined;
 - (i) the name of any owner of the house included in its register by virtue of section 83(1)(a) or 87(2);
 - (ii) the name of any person who acts for the owner in relation to a lease or occupancy arrangement to which the house is subject included in its register by virtue of section 83(1)(c), 87(2) or 88(2);
 - (iii) the address to which correspondence with the relevant person should be directed included in its register by virtue of section 83(1)(ca) or 87(2); and
 - (iv) any information included in its register by virtue of section 87A(2).
 - (b) a particular person, confirm to the applicant –
 - (i) whether that other person is registered in its register; and
 - (ii) whether its register includes a note under section 92ZA of a decision to refuse that other person's entry in, or to remove that other person from, the register.
- (2) A local authority may, on the application of any person, provide that person with such other information from its register as it thinks appropriate.
- (3) Information provided under subsection (2) may be provided subject to such conditions as the local authority thinks appropriate.
- (4) Despite subsection (1), a local authority may withhold information where it considers that providing the information would be likely to jeopardise –

(a) the safety or welfare of any person; or

(a) the security of any premises.

...