



Scottish Information
Commissioner
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Decision Notice 120/2025

Fitness to Teach - transitional arrangements

Authority: General Teaching Council for Scotland
Case Ref: 202500147

Summary

The Applicant asked the Authority for a copy of a specific document. The Authority disclosed the majority of the document but withheld some information on the basis that disclosure would be likely to inhibit the free and frank provision of advice. The Commissioner investigated and found that the Authority was not entitled to withhold information under the exemption claimed. He required the Authority to disclose the wrongly withheld information to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 30(b)(i) (Prejudice to effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 29 November 2024, the Applicant made a request for information to the Authority. Referring to a previous FOI request made to the Authority, he asked the following:

“Please could you send me a copy of the document that was presented to the meeting under the item on Fitness to Teach Caseload – Transitional Arrangements? – it looks like its document (16- 18PRA(16)24)”
2. The Authority responded on 19 December 2024. It disclosed some information within the document requested and withheld other information under the exemptions in sections 30(b)(i) and 38(1)(b) of FOISA.

3. On 20 December 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not believe the exemption in section 30(b)(i) of FOISA applied.
4. The Authority notified the Applicant of the outcome of its review on 22 January 2025. This upheld its reliance on the exemption in section 30(b)(i) of FOISA, modified to disclose some other information previously withheld.
5. On 25 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 he disagreed that exemption in section 30(b)(i) of FOISA applied.

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 4 February 2025, 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 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 its application of section 30(b)(i) of FOISA and its consideration of the public interest test.

Commissioner's analysis and findings

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

Section 30(b)(i) – substantial inhibition to free and frank provision of advice

10. The Authority withheld a paragraph of text relating to risk implications within the document requested by the Applicant, under the exemption in section 30(b)(i) of FOISA.
11. Section 30(b)(i) of FOISA provides that the information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. The exemption is subject to the public interest test in section 2(1)(b) of FOISA.
12. In applying this exemption, the chief consideration is not whether the information constitutes advice, but whether the disclosure of that information would, or would be likely to, inhibit substantially the provision of advice. The inhibition in question must be substantial and therefore of real and demonstrable significance.

The Authority's submissions

13. The Authority explained that the information request related to a paper prepared for its Professional Regulatory Assurance Committee (PRAC). The PRAC is responsible for overseeing work related to the Authority's regulatory obligations. PRAC meetings are private

and are not open to the public. It therefore considered the papers and minutes of PRAC meetings to be “confidential [Authority] business”.

14. The Authority stated this is to ensure the PRAC is provided with free and frank advice from the Authority’s officers, ensuring that it is fully informed when reaching decisions on particular strategic issues. As a result, PRAC meetings contain private and confidential, often sensitive matters, that are discussed in a private space.
15. The Authority noted that the specific PRAC paper requested was written in 2016 and related to a process of updating its Fitness to Teach Rules and process. Given the passage of time and content of the paper, it considered the majority of the paper could be disclosed.
16. As noted in the PRAC paper, a public consultation was underway at the time of writing in relation to the proposals for change. After the paper was written, the consultation was concluded with a consultation report being provided. These all remain publicly available on the Authority’s website, leading the Authority to consider that the majority of this particular PRAC paper could be released under FOISA – notwithstanding its general position that these papers are private and confidential.
17. However, the Authority withheld a small amount of information under the exemption in section 30(b)(i) of FOISA. While the content of the paper related to matters no longer considered sensitive, “the effect of disclosure of sensitive advice, regardless of the passage of time, would be significant”.
18. The Authority reiterated that it considered committees and committee papers to be, by default, private. This is to ensure that, in relation to proposed work, colleagues can first consider fully the relevant issues to then allow them to advise Council members and ensure that they, in turn, are properly informed when reaching their decisions.
19. The Authority stated that colleagues must be able to provide advice in relation to proposed work, for further consideration with Council members in private, to ensure that members are properly informed when reaching decisions and providing open advice. It submitted that the papers are written with no reasonable expectation that they will be made public and, at the very least, that discrete points of advice provided will remain private and confidential.
20. The Authority highlighted that it was only withholding a very small amount of information in the PRAC paper, namely where “confidential advice has been provided to the Committee to assist them in their decision-making function and to ensure they are properly informed”. If this information were to be disclosed into the public domain, it considered there would be a “high probability” that it would cause contributors to it to become “more restrained in the future when providing advice to our committee and Council Members”.
21. The Authority submitted that the withheld information provided “very clear and frank advice” to the Committee on the risks involved. The purpose of providing this information, and in such a frank way, was to ensure that the Committee was aware of the risks involved and received all the advice required, in order for them to reach an informed decision on an important issue.
22. If it was known that sensitive elements of this paper, including private advice, would be made public, the Authority contended that this would have the impact of “substantially inhibiting the free and frank provision of advice” to Committees by the Authority’s officers. It argued these

officers would be “disinclined to give any advice to our committees in written form, meaning that the committees would not be provided with formal, recorded advice”.

23. The Authority considered this would be an “untenable” position for a public authority to be placed in and noted that its governance structures require it to ensure Committees are properly and effectively advised and that a record is kept of its decision-making process, including the advice provided for decisions to be reached.
24. While it accepted it could release the majority of the specific PRAC paper requested by the Applicant, the Authority considered that disclosure of the information withheld under the exemption in section 30(b)(i) of FOISA would significantly impact on its ability to function appropriately and with accountability.

The Applicant’s submissions

25. The Applicant did not believe that the withheld information redacted information could reasonably be classed as “advice” in the terms intended by the Scottish Parliament when drafting FOISA.
26. The Applicant considered the withheld information was not the “advice” of “individual employees to a Committee, but rather the decided view of the senior officer presenting the paper.” In his view, it was presented as “a factual (and anonymous) account of the risks perceived at the time, rather than advice from individuals.”
27. The Applicant submitted that there was “no evidence” that disclosing the risk implications of the proposed cancellations nine years after the PRAC paper was written, would have any significant chilling effect on the Authority.
28. The Applicant also argued that the paper, and its contents, could not be considered highly confidential, given that a large number of people from many backgrounds had access to the paper at the time.

The Commissioner’s view

29. The Commissioner has considered the submissions made by both parties, along with the withheld information.
30. In assessing whether the exemption in section 30(b)(i) of FOISA applies, the Commissioner has taken account of a number of factors, including:
 - the identity or status of the author and/or the recipient
 - the circumstances in which the advice or views were given
 - the sensitivity of the advice or views.
31. The withheld information forms part of a paper written over nine years ago. The Authority has also acknowledged that the content of the paper related to matters which were no longer sensitive, but it maintained that “the effect of disclosure of sensitive advice, regardless of the passage of time, would be significant”.
32. Having reviewed the withheld information, the age of that information and the Authority’s submissions, the Commissioner does not accept that the information is particularly sensitive or that disclosure would result in the harm claimed by the Authority.
33. While the Commissioner cannot reveal the content of the withheld information, he considers it to be relatively anodyne and he does not accept that disclosure would inhibit, in any

meaningful way, other employees of the Authority from providing similar such advice in future. He does not agree that employees of the Authority would refrain from providing advice of the type in the withheld information, in the belief that the advice would subsequently be made public. In fact, he considers it would be contrary to the professional responsibilities of employees of the Authority not to provide and record similar such advice in future.

34. FOISA has been in force for 20 years now and, in that time, the Commissioner is satisfied that those responsible for providing the professional advice on which the public sector depends have developed a nuanced understanding of the way in which the legislation works and may impact on how they discharge their responsibilities. He is satisfied it is generally understood that the risk of inhibition must always be assessed on a case-by-case basis and not generically – and he does not accept that the chilling effect claimed by the Authority here can, as a broad, general precept rather than the exception, be borne out by experience.
35. In all the circumstances, the Commissioner is not persuaded, from the submissions he has received and the content of the information itself, that disclosure of the information, withheld under the exemption in section 30(b)(i) of FOISA, would result in the harm claimed by the Authority.
36. The Commissioner does not, therefore, accept the application of the exemption in section 30(b)(i) of FOISA should be upheld in respect of the information being withheld under this exemption.
37. Given that the Commissioner does not accept the application of the exemption for the information withheld under section 30(b)(i) of FOISA, he is not required to consider the public interest in section 2(1)(b) for that information.
38. The Commissioner therefore requires the Authority to disclose to the Applicant the information he has found it was not entitled to withhold under the exemption in section 30(b)(i) of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 (and, in particular, section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority wrongly withheld information under the exemption in section 30(b)(i) of FOISA.

The Commissioner therefore requires the Authority to disclose to the Applicant the information he has found to have been wrongly withheld, by **31 July 2025**.

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.

Euan McCulloch
Head of Enforcement

16 June 2025