



Scottish Information
Commissioner
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Decision Notice 137/2025

Letter of appointment of specified Board Member

Authority: Scottish Ministers
Case Ref: 202500156

Summary

The Applicant asked the Authority for communications with a named NHS Board between 1 January 2024 and 1 November 2024 regarding the recruitment, appointment and approval of a new Medical Director and Executive Director to that named NHS Board. The Authority partially disclosed some information and withheld some other information as it believed disclosure would prejudice the effective conduct of affairs, or comprised third party personal data. It informed the Applicant that the appointment letter was not considered to fall within the scope of the request as it was a communication with the successful candidate on a private, individual basis. The Commissioner investigated and found that the letter did fall within the scope of the request.

Relevant statutory provisions

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

Background

1. On 2 December 2024, the Applicant made a request for information to the Authority. She asked for all communications between [the Authority] and [a named NHS Board] between 1 January 2024 and 1 November 2024, in respect of the recruitment, appointment and approval of a new Medical Director, and Executive Director, of the [named] Board.

2. The Authority responded on 31 December 2024. It partially disclosed the majority of the information requested and withheld the remainder under the exemption in section 30(c) (Prejudice to effective conduct of public affairs) on the basis that disclosure would harm the ability to run future open and fair recruitment campaigns for similar posts, and section 38(1)(b) (Personal information) for information that comprised third party personal data.
3. That same date, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because, within the information disclosed, there was reference to the issue of an appointment letter which, given that the successful candidate was an employee of the named NHS Board, would also be a communication between the Authority and that Board.
4. The Authority notified the Applicant of the outcome of its review on 17 January 2025, fully upholding its original decision without modification. The Authority stated that any communication with a candidate for a position within a health board was on an individual, private basis, and was not with the organisation they were employed by at that point in time. The Authority therefore considered that the appointment letter to the successful candidate did not fall within the scope of the request. Notwithstanding its decision, the Authority provided the Applicant with a copy of the letter (with some personal information redacted) outwith FOISA.
5. On 26 January 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority's review because, as this was an internal appointment to the named NHS Board, the letter would still be within the information requested. She further submitted that, while the Authority had stated that the letter did not fall within the FOI law, it had cited no exemption and, despite this, a [response](#)¹ to a separate information request published on the Authority's website disclosed a number of similar appointment letters, albeit for a different Scottish public authority.

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 18 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 which it had deemed to fall outwith the scope of the Applicant's request (i.e. the appointment letter). The Authority provided the information and 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 focused on the Authority's justification for considering the information to fall outwith the scope of the request.

¹ <https://www.gov.scot/publications/foi-202300378861/>

9. During the investigation, when providing its submissions to the Commissioner, the Authority disclosed the full unredacted letter to the Applicant, again outwith FOISA. Following this, and noting that the Authority's position was that the letter was still outwith scope, the Applicant confirmed that she wished the Commissioner to continue to investigate whether or not the letter fell within the scope of Freedom of Information, to ensure that access to such material was not denied in future.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

11. 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.

The Applicant's submissions

12. In her submissions to the Commissioner, the Applicant argued that, through the publication of a separate information request, ministerial appointment letters for similar posts had regularly been published by the Authority.

The Authority's submissions

13. During the investigation, the Investigating Officer drew the Authority's attention to the published FOI response on its website referred to by the Applicant in her application, and to a further FOI [response](#)² which resulted in the release of an appointment letter. The Authority was asked to explain why it considered the appointment letter, in this case, fell outwith the scope of the Applicant's request.
14. In response, the Authority argued that these two requests commanded different circumstances to the one under consideration here. It submitted that, in the first case, the requester had specifically asked for appointment letters. In the second case, the requester had asked for communications between officials more broadly (without specifying communications between X and Y) and, in that case, the appointment letter was attached to one of these communications. The Authority was satisfied that, in those cases, the appointment letters fell within scope, but considered these to be different from this case and so were irrelevant to the circumstances of this case.
15. The Authority submitted that the request under consideration here asked for information exchanged between the Authority and the named NHS Board about the appointment of a new medical director. It therefore believed the consideration here was whether the appointment letter was a communication solely with addressee (the appointee) or with the organisation (the named NHS Board). In the Authority's view, the letter was addressed to an individual, confirming their appointment to a position, and was with that person on an individual, private basis, as opposed to with that person's wider organisation.

² <https://www.gov.scot/publications/foi-202400395590/>

16. The Authority submitted that the cover email to the appointment letter (a copy of which it provided to the Commissioner during the investigation) was marked and classified as “personal” and this suggested that the sender had sent it on the basis of it being a communication with an individual.
17. The Authority stated that, although private information might be held by an organisation in an official email account, it can be deemed to be held there on behalf of the recipient and was not automatically the official business of that organisation.
18. The Authority maintained its position that the letter fell outwith the scope of the request, and confirmed that the copies provided to the Applicant both at review stage and during the investigation were disclosed outwith FOISA and with the addressee’s permission.

The Commissioner’s view

19. The Commissioner has carefully considered the submissions by both parties, along with the letter of appointment and the covering email. He notes the opposing views of both parties on whether the appointment letter falls within the scope of the request.
20. The Commissioner notes that the appointment letter was addressed to the appointee at his work email address (i.e. an email address of the named NHS Board which was his employer at the time) and that the cover email is marked “personal”. The Commissioner therefore accepts that the letter has been sent to him personally, albeit to his work email address.
21. Notwithstanding this, the Commissioner also notes that the cover email (enclosing the letter of appointment) was not solely addressed to the successful candidate, but was also cc’d to two other email addresses. One of these was the work email address of another individual, which also happened to be an email address of the named NHS Board, and was presumably sent to that individual in respect of their role in the recruitment process (the Commissioner can identify, and has been offered, no other reason why the individual in question would have received a copy of the letter). In light of this, the named NHS Board would therefore hold a copy of the appointment letter for its own purposes.
22. Having given this his full consideration, the Commissioner is therefore satisfied that the letter of appointment does, indeed, fall within the scope of the Applicant’s request. By failing to identify this information as falling within scope, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.

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. The Commissioner finds that the Authority breached section 1(1) of FOISA by wrongly considering the letter of appointment to fall outwith the scope of the Applicant’s request and, in so doing, it failed to comply with Part 1 of FOISA.

The Commissioner therefore requires the Authority to carry out a fresh review in respect of this information and issue a revised review outcome to the Applicant by **21 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

5 June 2025