



Scottish Information
Commissioner
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Decision Notice 181/2025

NHS Golden Jubilee Conference Hotel running costs

Applicant: Anonymous

Authority: National Waiting Times Centre Board

Case Ref: 202300845

Summary

The Applicant asked the Authority for information relating to the running costs and any surplus or deficit of the NHS Golden Jubilee Conference Hotel over a specified period. The Authority withheld the requested information because it considered it to be commercially sensitive. The Commissioner did not accept that the Authority was entitled to withhold the information and required the information to be disclosed to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 1 March 2023, the Applicant made a request for information to the Authority. Among other things, she asked for
 - The running costs of the Golden Jubilee Conference Hotel (the Hotel) for each year since 2016/17
 - What surplus / deficit was generated by the Hotel for each year since 2016/17.
2. The Authority responded on 5 April 2023. It withheld the requested information under the exemption in section 33(1)(b) of FOISA.

3. On 12 April 2023, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the Authority's decision not to release the requested information due to commercial sensitivity. She noted that other information provided by the Authority appeared to confirm that the money generated by the Hotel and conference centre remained "within public funds, within the NHS and not as a purely commercial entity".
4. The Authority notified the Applicant of the outcome of its review on 21 April 2023, which fully upheld its original decision.
5. On 4 July 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated that she was dissatisfied with the outcome of the Authority's review for the reasons set out in her requirement for review, which she believed meant the requested information should be made publicly available.

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 7 July 2023, 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 Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and its comments, and 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 33(1)(b) – Commercial interests and the economy

10. Section 33(1)(b) of FOISA provides that information is exempt information if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority). This exemption is subject to the public interest test in section 2(1)(b) of FOISA
11. There are several elements a Scottish public authority needs to demonstrate are present when relying on this exemption. It needs to establish:
 - i) whose commercial interests would (or would be likely to) be harmed by disclosure
 - ii) the nature of those commercial interests, and
 - iii) how those interests would (or would be likely to) be prejudiced substantially by disclosure.
12. The prejudice must be substantial, in other words of real and demonstrable significance. Where the authority considers that the commercial interests of a third party would (or would be likely to) be harmed, it must make this clear. Generally, while the final

decision on disclosure will always be one for the authority, it will assist matters if the third party has been consulted on the elements referred to above

The Applicant's submissions about the exemption

13. As stated above, the Applicant disagreed with the Authority's decision to withhold the requested information due to commercial sensitivity.
14. The Applicant referred to the following extract of a letter provided to her by the Authority:
"To reflect current market conditions, the 4 star Hotel reduced its conference prices for NHS Scotland. This provides excellent value for Boards and ensures that NHS money stays within the NHS."
15. As rehearsed earlier, the Applicant considered that this clarified that the money generated by the Hotel and conference centre remained "within public funds, within the NHS and not as a purely commercial entity". She therefore believed that the requested information should be made publicly available.

The Authority's submissions about the exemption

16. The Authority stated that the Hotel is part of the Authority. However, the Hotel is operated on a commercial basis. This means that the Hotel is valued on a "current value in existing use" basis as opposed to the remainder of the Authority's land and buildings which are valued based on the "cost to replace them with a modern equivalent asset". All reports provided on the Hotel are taken to a private session of the Authority in line with the commercial nature of the operations of the Hotel.
17. The Authority explained that the Hotel provides services to private enterprise conferences and training, community and local life events, as well as NHS and public sector conferences, training and patient stays. Patients are referred to the Hotel from all over Scotland and they and their families use the Hotel during their referral period. All rooms used by patients generate income, whether from the individuals themselves or their referring Health Board.
18. The Authority further explained that bedrooms are also let to individuals and families traveling for leisure and that the Hotel supports local tourism in Loch Lomond and surrounding areas. The Hotel has a lettable room capacity of 170 bedrooms (making it the largest independent hotel in Scotland) and it is the largest 4-star hotel within ten miles of its location in Clydebank.
19. The Authority submitted that the conference facilities in the Hotel are well used (within a commercial pricing model) by local business and by private and third sector enterprises linked with healthcare companies, unions, public sector-linked institutions and academia. It said that the Hotel is therefore in direct competition with other hotels and conference venues, both within Scotland and across the UK.
20. In relation to the requested information, the Authority explained that it understood that disclosure of that information would substantially prejudice the commercial interests of the Hotel and its ability to participate in a commercial activity in a competitive environment. Disclosure of that information under FOISA (which would enter it into the public domain) would allow motivated competitors access to privileged information that would be used against the Hotel. Combining that information, alongside existing knowledge of the Hotel's publicised rates, would allow these competitors to take pricing decisions that would benefit them commercially and be detrimental to the commercial interests of the Hotel.

21. The Authority explained that the Hotel tried to keep costs low for public sector use, such as patient bedrooms and NHS conferences, while having a competitive commercial rate to cover costs. If these rates were disclosed, this would have a detrimental impact and would make the Hotel “non-viable”. This could lead to closure of the Hotel and have a knock-on economic impact on the local community “as an employer and part of the local supply chain and [the Authority’s] role as an anchor institution”.
22. Regarding the Applicant’s argument at paragraphs 14 and 15 above, the Authority said that reduced prices for NHS Scotland conferences and events help reduce the cost of NHS Scotland spending as a whole. All NHS meetings and event enquiries are directed to SHSC Events Management, part of NHS National Services Scotland. SHCS follow the guidelines in the letter the Applicant referred to, which state that the Hotel must be used as the first-choice property for NHS meetings and events.
23. The Authority said that the Hotel generated its own income, which was then used to improve and develop the Hotel’s facilities. This also supported “the balance of commercial versus public sector” to cover costs, to allow the Hotel to keep prices as low as possible for public sector use.
24. Over the period covered by the Applicant’s request, the Authority noted that it had seen business being lost to several competitors (a number of whom it named). It said that the NHS “client” is seen by competitors as a lucrative contract and market and allowing competitors to gain a competitive advantage would be detrimental to the Hotel’s financial position.

The Commissioner’s view

25. The Commissioner has carefully considered all the arguments put forward, along with the withheld information.
26. "Commercial interests" are not defined in FOISA, but the Commissioner’s [guidance on the exemption in section 33\(1\)\(b\)](#)¹ states that an organisation’s commercial interests will usually relate to the commercial trading activity they undertake. Given the Authority’s submissions and the nature of the withheld information, the Commissioner is satisfied that the interests identified above by the Authority are commercial interests for the purposes of the exemption in section 33(1)(b) of FOISA.
27. In order to rely on this exemption, an authority must also evidence why disclosure would, or would be likely to, prejudice the commercial interests of any person (which including its own commercial interests) substantially.
28. On the question of harm, the Commissioner must be persuaded by the submissions he has received from the Authority. In his view, these do not explain how the disclosure of the requested information would have had, or would have been likely to have (at the time the Authority responded to the Applicant’s request or his requirement for review), a substantially prejudicial impact on the Authority’s commercial interests in the Hotel.
29. While the Commissioner cannot reveal the content of the withheld information, he can confirm that what is withheld are total (i.e. non-itemised) annual running costs and total profit and loss figures for each of the years specified in the request.

¹ <https://www.foi.scot/sites/default/files/2023-06/BriefingSection33CommercialInterestsandtheEconomy.pdf>

30. The Commissioner would emphasise that he can only consider the information actually sought by the Applicant, and whether disclosure of that would be the catalyst to cause the harm claimed. The question to answer is how disclosure of the information being withheld in this case would lead to the substantial prejudice required for this exemption to be engaged.
31. In relation the actual information being withheld in this case, the Commissioner considers the submissions provided by the Authority are speculative in nature. The Authority has argued that disclosure of the withheld information would enable its competitors to gain a competitive advantage would be detrimental to the Hotel's financial position. Specifically, the Authority submitted that combining that information, alongside existing knowledge of the Hotel's publicised rates, would allow these competitors to take pricing decisions that would benefit them commercially and be detrimental to the commercial interests of the Hotel
32. Taking account of the submissions received from the Authority in relation to the actual information being withheld in this case, the Commissioner does not believe he has any option but to find that the Authority has not evidenced the required substantial prejudice for section 33(1)(b) of FOISA to be engaged. He cannot see any way, based on the submissions provided by the Authority, that a competitor could gain any financial advantage from disclosure of total (i.e. non-itemised) annual running costs and total profit and loss figures for each of the years specified in the request.
33. It is for the Authority to provide the required evidence of harm, not for the Commissioner to go out and find it or make the case on behalf of the Authority. Consequently, in this case, the Commissioner is not satisfied that the information requested was properly withheld under this exemption. Having reached that conclusion, the Commissioner is not required to consider the public interest test in section 2(1)(b) of FOISA.
34. The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant, by the date stated below.

Time to respond to request

35. In their application, the Applicant expressed dissatisfaction with the Authority's failure to respond within the statutory timescale to their request.
36. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
37. As the Applicant did not express dissatisfaction in their requirement for review with the Authority's failure to respond within the statutory timescale to her request, the Commissioner cannot reach a formal finding on this. However, it is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days required by section 10(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 was not entitled to rely on the exemption in section 33(1)(b) of FOISA to withhold information from the Applicant.

The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant, by 29 August 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.

David Hamilton

Scottish Information Commissioner

15 July 2025