



Scottish Information
Commissioner
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Decision Notice 230/2025

Twinning with Gaza

Authority: Edinburgh City Council
Case Ref: 202500127

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 appropriately withheld some information but wrongly withheld other information. The Commissioner required the Authority to disclose the wrongly withheld information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 30(b)(ii) (Prejudice to the effective conduct of public affairs); 38(1)(b), (2A), (5) (definitions of "data protection principles", "data subject", "personal data", "processing" and "UK GDPR") and (5A) (Personal information); 47(1) and (2) (Application for decision by Commissioner).

United Kingdom General Data Protection Regulation (the UK GDPR) articles 5(1)(a) and (f) (Principles relating to processing of personal data); 6(1)(f) (Lawfulness of processing); 9(1) and (2)(e) (Processing of special categories of personal data).

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), (4)(d), (5) and (10) (Terms relating to the processing of personal data).

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](#)¹.
3. The Authority responded on 29 April 2022. It refused 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. It 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. He 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, which upheld 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. He 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.
7. The Commissioner investigated and issued [Decision 236/2024](#)², which 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 carry out adequate, proportionate searches for the information requested and issue a revised review outcome.

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

² <https://www.foi.scot/sites/default/files/2024-11/Decision236-2024.pdf>

8. On 31 December 2024 the Authority notified the Applicant of the new outcome of its review. It provided some information and withheld information under (variously) sections 30(b)(ii), 36(1), 38(1)(a) and 38(1)(b) of FOISA.
9. On 12 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 considered that the redactions under section 30(b)(ii) and 38(1)(b) had been applied incorrectly, and not all information in scope had been identified.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
11. 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 to the Commissioner, and the case was allocated to an investigating officer.
12. 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 the searches carried out by the Authority and the applicability of the exemptions claimed.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

14. 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.
15. 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

16. The Authority withheld several documents in their entirety, as well as sections of documents that were partly disclosed to the Applicant, on the grounds that this information fell outwith the scope of the Applicant's request.
17. As outlined above the Applicant requested information that conveyed, or expressed a wish to convey, a substantive view. This was subject to the caveat that the he was not requesting purely administrative or transactional documents.

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. He clarified that he intended the phrase “substantive views” to mean:

“... any argument or expression of opinion that a reasonable person would expect the committee to take into account in its deliberations, and to include all context (ie surrounding text, in the case of written material) that a reasonable person would think necessary for the argument or expression of opinion to be properly understood and considered.”
19. The Authority explained that it had excluded several documents previously identified (consisting of correspondence to the Authority’s committee mailbox) as they did not contain a “substantial view”. It also stated that it “would not usually include links to public material, social media or newspapers as part of a response to a freedom of information request.”

The Commissioner’s view

20. Before addressing the specific withheld sections of partly disclosed documents, the Commissioner will first consider the documents that were withheld by the Authority in their entirety as falling out of the scope of the request.
21. While the Applicant did not expressly define “transactional” or “administrative,” the Commissioner considers that the example of email acknowledgements suggests that he did not intend to exclude any document including an element of administration, but to exclude low value documents with no substantive content whatsoever. (If the Authority considered either definition to be unclear, it was open to the Authority – in line with its duty to provide advice and assistance – to contact the Applicant to seek clarification.)
22. The Commissioner notes that the Applicant’s request asked for “material that conveys or indicates a wish to convey a substantive view” (emphasis added). While the Commissioner agrees that these emails to the committee mailbox do not convey substantial views, he considers they indicate a wish to do so.
23. One of these documents is not devoid of substantive content. It contains information expressing not just an interest in speaking, but also a preference on when the writer would get to speak. The Commissioner therefore does not agree that this email falls outwith the scope of the request. He requires this document to be disclosed to the Applicant (subject to redaction of personal data under section 38(1)(b) of FOISA).
24. However, having reviewed the remainder of these documents, the Commissioner is satisfied that it was entirely administrative (to the extent the information contained within it fell within the time period specified in the request), and thus was correctly withheld by the Authority as falling outwith the scope the scope of the request.
25. As rehearsed above, the Authority also withheld “links to public material, social media or newspapers” and suggested that withholding such information is its standard practice. The Authority provided no indication of the lawful basis for excluding this material, and the Commissioner has identified no provision of FOISA that would allow for a blanket withholding of material of this sort.
26. The Commissioner’s [guidance on section 25 of FOISA](https://www.foi.scot/sites/default/files/2023-05/BriefingSection25InformationOtherwiseAccessible_25.5.23.pdf)³ makes clear that “If the information is already publicly available, the authority should tell the requester how to access it, and should

³ https://www.foi.scot/sites/default/files/2023-05/BriefingSection25InformationOtherwiseAccessible_25.5.23.pdf

provide adequate signposting e.g. by giving them direct links to online information.” While the situation here is not identical, the Commissioner considers the same general approach to be appropriate.

27. The Commissioner therefore requires the Authority to disclose all “links to public material, social media or newspapers” withheld from the Applicant except where an exemption applies to a specific link. He also recommends that the Authority review its processes to ensure that material of this sort is not inappropriately withheld in future.
28. The Authority also treated as out of scope a range of material that the Commissioner considers was clearly intended to be considered as part of correspondence conveying the writers’ views on the petition in question. Information withheld in this manner includes:
 - comments on other campaigns by the same petitioner
 - criticism of the Authority and its officers
 - comments on other twinning projects
 - concerns about risks to twinning.
29. The Commissioner requires the Authority to disclose this information to the Applicant.
30. However, the Commissioner agrees that the Authority appropriately withheld other information as out of scope, including:
 - various expressions of dissatisfaction with issues not related to the petition.
 - internal correspondence
 - documents outwith the timeframe of the request.

Searches

31. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
32. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner’s role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
33. The Applicant highlighted several apparent gaps in the information provided to him:
 - at least one document from the Authority’s previous response to him which was omitted.
 - no Whatsapp or telephone messages were identified.
 - no correspondence from “Israeli authorities” was identified.
34. Regarding his concern that no correspondence from “Israeli authorities” had been identified, the Applicant referred the Commissioner to media reporting that suggested that the Authority had received such correspondence. The Authority stated that it had received no such

correspondence on this matter from Israeli authorities and noted that it had been consistent in this position.

35. The Authority explained that it had identified its committee, governance and legal teams as the only teams likely to hold information in scope and provided evidence of searches, using an extensive range of keywords, of its corporate systems.
36. The Authority explained that its policies forbid the use of Whatsapp for work use, but for completeness it requested staff search locations including their phones.

The Commissioner's view

37. The Commissioner has carefully considered the submissions from both parties, together with the information identified and the supporting evidence and explanation of searches. Having done so, he is satisfied that the searches carried out by the Authority would have been capable of identifying any relevant information.
38. The Commissioner therefore concludes, on balance, that the Authority does not (and did not, on receipt of the request) hold further information falling within the scope of the request, beyond that already identified by these searches.
39. While the Applicant believed and expected more information to be held by the Authority, the Commissioner is satisfied that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide as a question of compliance with Part 1 of FOISA.
40. The Commissioner will now go on to consider the Applicant's concern that documents previously shared with him had been withheld.

Information previously provided to the Applicant

41. The Authority explained that it had not provided some documents (a letter to its legal department and a letter from a charity working in Gaza) as they had already been provided to the Applicant
42. The Commissioner recognises that versions of both documents had previously been disclosed to the Applicant. However, they were provided to the Applicant in a heavily redacted form.
43. The Authority had redacted some of this information on the grounds it fell outwith the scope of the request. However, the Commissioner is satisfied – for the reasons outlined above – that this information falls within the scope of the request. The Authority was therefore required to disclose this information to the Applicant. By failing to do so, the Authority failed to comply with section 1(1) of FOISA.
44. Some material in these documents was withheld under section 30(b)(ii) and 38(1)(b). The Commissioner shall go on to consider the application of these exemptions under the appropriate headings, below.

Section 38(1)(b) – Personal data

45. The Authority withheld several distinct sets of information as personal data: names of individuals, contact details, descriptions of individuals' views (provided by the individuals themselves) and commentary on an individual (provided by a third party).
46. Section 38(1)(b) of FOISA, read in conjunction with section 38(2A)(a) (or (b)), exempts information from disclosure if it is "personal data", as defined in section 3(2) of the DPA 2018

and its disclosure would contravene one or more of the data protection principles set out in Article 5(1) of the GDPR.

Is the withheld information personal data?

47. The first question the Commissioner must address is whether the information is personal data for the purposes of section 3(2) of the DPA 2018, i.e. any information relating to an identified or identifiable individual.
48. Information will “relate to” a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
49. An “identifiable living individual” is one who can be identified, directly or indirectly, by reference to an identifier (such as a name) or one or more factors specific to the individual (see section 3(3) of the DPA 2018).
50. The Commissioner is satisfied that most of the information being withheld under section 38(1)(b) of FOISA is personal data: the data withheld includes names, contact details, personal opinions and descriptions of individuals. Living individuals are identifiable from most of this information and the information clearly relates to those individuals.
51. However, the Commissioner does not agree that all the withheld opinion is identifiable. Some of the views withheld under section 38(1)(b) were conveyed by members of the public whose names and contact details were, as described below, appropriately withheld. In the absence of these names and contact details, the Commissioner does not consider there to be any plausible means of linking this information to the individuals in question.
52. The Commissioner therefore concludes that most of the information withheld under the exemption in section 38(1)(b) of FOISA is personal data for the purposes of section 3(2) of the DPA 2018, but a small amount of information is not.
53. Some of the information the Commissioner has found not to be personal data was also withheld by the Authority under the exemption in section 30(b)(ii) of FOISA. He will consider that information later in his decision.

Would disclosure contravene one of the data protection principles?

54. The Authority argued that disclosing the personal data would breach the first data protection principle.
55. The first data protection principle requires personal data to be processed “lawfully, fairly and in a transparent manner in relation to the data subject” (Article 5(1)(a) of the GDPR).
56. The definition of “processing” is wide and includes (section 3(4)(d) of the DPA 2018), “disclosure by transmission, dissemination or otherwise making available”. For the purposes of FOISA, personal data are processed when disclosed in response to a request.

Special category personal data

57. Article 9 of the UK GDPR sets out special categories of data, which is personal data which is considered to need further protection because of its particular sensitivity.
58. Having reviewed the withheld information, the Commissioner is satisfied that some of the data meet the definition of special category data.

59. The Commissioner's [guidance on section 38\(1\)\(b\) of FOISA](#)⁴ notes that Article 9 of the UK GDPR only allows special category personal data to be processed in very limited circumstances. He considers that the only situations where it is likely to be lawful to disclose special category personal data in response to an information request under FOISA is where the condition in Article 9(2)(e) of the UK GDPR applies.
60. Article 9(2)(e) of the UK GDPR allows special category personal data to be processed where the personal data have manifestly been made public by the data subjects. (The definition of "processing" of personal data is set out in paragraph 56.)
61. For the majority of the special category data, the Commissioner has no reason to believe the data have been manifestly made public by the data subjects.
62. Although some of the special category data was alleged to have been included in public speeches by the data subject, the Commissioner has been unable to verify this claim. The Commissioner cannot therefore be satisfied that these data had been manifestly made public by the data subject).
63. Some of the special category data relate to the views of a priest, who is identified as such in information readily accessible in the public domain. Having reviewed the withheld information, the Commissioner is satisfied that the data subject has simply affirmed beliefs connected to their publicly professed faith. He is therefore satisfied that these data have been manifestly made public by the data subject.
64. Consequently, the Commissioner is satisfied that it would (with the exception of the special category data relating to the priest) be unlawful for the Authority to disclose the special category personal data. Disclosing the special category data would breach the first data protection principle. It is therefore exempt from disclosure under section 38(1)(b) of FOISA.
65. The Commissioner must now consider the remaining withheld personal data (including the special category data of the priest that he is satisfied has manifestly been made public by the data subject) and decide whether disclosing it would breach the first data protection principle.

Lawful processing - Article 6(1)(f) of the UK GDPR

66. In considering lawfulness, the Commissioner must consider whether any of the conditions in Article 6(1) of the UK GDPR would allow the personal data to be disclosed.
67. The Commissioner considers that condition (f) of Article 6(1) of the UK GDPR is the only one condition which could potentially apply. This states that processing shall be lawful if it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.
68. Although Article 6(1) of the UK GDPR states that this condition cannot apply to processing carried out by a public authority in performance of its tasks, section 38(5A) of FOISA makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under FOISA.
69. The tests which must be met before Article 6(1)(f) can be met are as follows:

⁴ [https://www.foi.scot/sites/default/files/2025-04/FOISA Exemption Guidance Section 38 Personal Information v04 CURRENT ISSUE Access Checked.pdf](https://www.foi.scot/sites/default/files/2025-04/FOISA%20Exemption%20Guidance%20Section%2038%20Personal%20Information%20v04%20CURRENT%20ISSUE%20Access%20Checked.pdf)

- (i) Would the Applicant have a legitimate interest in obtaining personal data?
- (ii) If so, would the disclosure of the personal data be necessary to achieve that legitimate interest?
- (iii) Even if the processing would be necessary to achieve that legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subjects?

Does the Applicant have a legitimate interest in obtaining the personal data?

- 70. The Applicant submitted that disclosure of information that may reasonably be thought to have contributed to the decision to pull the discussion of twinning is necessary to achieve his legitimate interest in scrutinising the Authority's decision-making.
- 71. The names of the individuals making representations to the Authority, as well as the content of those representations, are likely to have contributed to the Authority's decision. This would apply particularly to individuals who (whether or not they were acting in a private capacity) might be thought to be representative or indicative of the views of significant authorities or organisations.
- 72. The Applicant argued names are needed to show where individuals might be expected to have, or to be representing those who would be expected to have, particular knowledge or interest in the subject. Their names were therefore necessary for full scrutiny of the Authority's actions.
- 73. The Commissioner accepts that the Applicant has a legitimate interest in knowing what views were shared, and the names of persons who shared these views, to understand the information it was receiving and facilitate scrutiny of decisions taken.

Is disclosure necessary to achieve that legitimate interest?

- 74. The next question is whether disclosure of the personal data would be necessary to achieve the legitimate interest in the information. "Necessary" means "reasonably" rather than "absolutely" or "strictly" necessary.
- 75. When considering whether disclosure would be necessary, public authorities must consider whether the disclosure is proportionate as a means and fairly balanced as to the aims to be achieved, or whether the Applicant's legitimate interest could reasonably be met by means which interfered less with the privacy of the data subject.
- 76. The Commissioner is not aware of any less restrictive means by which the Applicant's legitimate interest could be met. He agrees that providing the names of the organisations that these individuals represent would go some way to meeting this interest but does not consider this would not wholly meet this interest: especially for individuals writing to the Authority in their private capacity.
- 77. In all the circumstances, the Commissioner agrees that disclosure of names and opinions of those making representations to the Authority would be necessary to achieve the Applicant's legitimate interest in this case.
- 78. However, the Commissioner does not agree that the Applicant has a legitimate interest in obtaining the contact details of these individuals. He is therefore satisfied that the Authority was entitled to withhold that information under the exemption in section 38(1)(b) of FOISA.

79. The Commissioner will now consider whether the Applicant's legitimate interest in obtaining the names and opinions of those making representations to the Authority outweighs the rights and freedoms of the data subjects.

The data subjects' interests or fundamental rights and freedoms (and balancing exercise)

80. The Commissioner has concluded that the disclosure of the information would be necessary to achieve the Applicant's legitimate interest. However, this must be balanced against the fundamental rights and freedoms of the individuals in question. Only if the legitimate interest of the Applicant outweighed those of the data subjects could personal data be disclosed without breaching the first data protection principle.
81. The Authority suggested that individuals could be subject to harm and would be substantially less likely to be willing to raise matters of complaint or concern with the Authority if their identities were disclosed.
82. The Authority also indicated that individuals contacting the Authority would expect this information to be held in confidence unless specifically stated otherwise. It stated that the privacy policy for the Authority's Democracy Services does not highlight the possibility of personal data being disclosed under FOISA. However, the Authority confirmed that it had not received any specific correspondence objecting to, or expressing concerns about, the disclosure of these personal data.
83. The Applicant argued that the appropriateness of disclosing the identities of the individuals involved would vary from individual to individual. He said that it was likely that some of these individuals contacted the Authority in circumstances that would strongly suggest they had a definite expectation that their names and the content of their communications would be made public, and that some others may have contacted the Authority in circumstances such that they could reasonably have expected this to happen.
84. Responding to the Authority's contention that disclosure of this information could harm individuals in contact with the Authority, the Applicant commented that it was "not at all clear to me that unwanted communications or abuse, if they were to occur at all, would reach a level that could be categorised as 'harm'". He also referred to the Commissioner's guidance on section 38 of FOISA that states "the focus should be on the harm or distress in a personal, as opposed to professional, capacity".
85. The Applicant argued that the information most relevant to his legitimate interests would relate to individuals communicating with the Authority in a professional capacity or as voluntary representatives of civil society organisations or communicating in ways strongly linked to their professional and/or civil society roles. He also submitted that:
- "Individuals making written submissions in lieu of participation in deputations will presumably have done so with the expectation and intention that their names would be made public. It would be reasonable for those making representations in this way to expect that their names would also be made public in other ways connected with the proceedings of the Committee, including responses to information requests such as this."
86. The Commissioner has considered the submissions from both parties carefully. In carrying out the balancing exercise, much will depend on the reasonable expectations of the data subjects.
87. Having considered the process whereby the Committee in question took deputations in its previous meeting of February 2022, and the way deputations were published in a

subsequent meeting of August 2022, the Commissioner is satisfied that individuals providing deputations can expect to be identified as a result of the normal course of committee business.

88. The expectations of individuals who did not ask to make a deputation shall vary. Many of the individuals involved hold a leadership or advocacy role within their own organisations. Given the seniority of these individuals, who all possess a degree of public profile by virtue of their roles, the Commissioner considers that these individuals would reasonably anticipate that their engagement with the Authority would be disclosed.
89. Other individuals wrote in a more junior capacity or are not prominently identified by their own organisation. The Commissioner does not consider that these individuals would expect to be identified.
90. The Commissioner notes the security and safety concerns raised by the Authority. He recognises that there is a risk of abuse to individuals connected to controversial topics such as the UK's relationship with Gaza. However, the individuals in question already have a public profile as campaigners on this sensitive issue. The Commissioner is therefore unaware of any reason why disclosing this specific correspondence would substantively modify the risks they face.
91. After carefully balancing the legitimate interest of the Applicant against the interests or fundamental rights or freedoms of the data subjects, the Commissioner finds that the legitimate interests served by disclosure of the opinions shared with the Authority, the names of individuals who submitted a deputation and the names of individuals who have a substantial public profile outweigh any unwarranted prejudice to the legitimate interests of the data subjects.
92. For the names of individuals who neither submitted a deputation, nor have a significant public profile, the Commissioner considers that the legitimate interests served by the disclosure of this information would be outweighed by the unwarranted prejudice that would result to the rights and freedoms or legitimate interests of the individuals in question in this case.
93. In all the circumstances of this particular case, the Commissioner concludes that condition (f) in Article 6(1) of the UK GDPR could be met in relation to the personal data (except the contact details and the names of individuals who neither submitted a deputation, nor have a significant public profile).

Fairness

94. The Commissioner must also consider whether disclosure would be fair. He finds, for the same reasons as he finds that condition (f) in Article 6(1) of the UK GDPR can be met, that disclosure of the opinions expressed, the names of people who submitted a deputation and names of senior individuals would be fair.

Section 30(b)(ii) of FOISA – Free and frank exchange of views

95. The Authority has withheld two emails under the exemption in section 30(b)(ii) of FOISA.
96. Section 30(b)(ii) provides that information is exempt information if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.

97. The chief consideration when applying the exemption in section 30(b)(ii) of FOISA is not whether the information constitutes opinion or views, but whether the disclosure of that information would, or would be likely to, inhibit substantially the free and frank exchange of views. The inhibition must be substantial and therefore of real and demonstrable significance.
98. Each request must be considered on a case-by-case basis, taking into account the effect (or likely effect) of disclosure of that particular information on the future exchange of views. The content of the withheld information will require to be considered, taking into account factors such as its nature, subject matter, manner of expression, and also whether the timing of disclosure would have any bearing.
99. As with other exemptions involving a similar test, the Commissioner expects authorities to demonstrate or explain why there is a real risk or likelihood that actual inhibition will occur at some time in the near future, not simply a remote or hypothetical possibility.

Submissions from the Authority

100. The Authority suggested that the nature of this issue increased the risk of unwanted communications or abuse being directed to any organisation that contacted it. Consequently, it considered that potential contributors may be discouraged as a result of the disclosure. In addition, it suggested that disclosure would restrict the ability of organisations expressing views to the Authority to be open and frank in their views.

Submissions from the Applicant

101. The Applicant agreed that the issue on the agenda was of a political nature and, like many controversial issues, was liable to invoke strong feelings. He argued that any organisation engaging in the Authority's democratic processes would recognise that and the associated risk of unwanted communications or abuse. In any event, he said that "unsolicited attention is normal for any organisation with any degree of public profile".
102. The Applicant described his own experiences and contact with organisations that submitted deputations – affirming that at least two organisations he had personal experience of expected their roles to be published. Although he acknowledged the background of harassment which Muslim organisations risk, he submitted that he was unaware of any expectation of heightened concern from these organisations.
103. The Applicant specifically commented on correspondence that did not take the form of a public deputation. He considered any such correspondence would be intervention in a process set up as an open and transparent one, to which some organisations were already contributing in an open and transparent way, following normal Authority procedures.
104. The Applicant suggested that organisations that sought to contribute transparently to the Authority's deliberations may well be inhibited from making future contributions if it appeared that their views were likely to be by-passed by undisclosed representations from anonymous organisations.

The Commissioner's view

105. The Commissioner has taken into account the fact that the persons that contacted the Authority to share views did so as part of a public process of consideration, including a committee meeting open to the public. At no point did the individuals involved indicate that they wished or expected their views to be concealed.

106. The Commissioner therefore cannot see how disclosure of these messages (other than personal information in these messages which was properly withheld under the exemption in section 38(1)(b) of FOISA) could inhibit the free and frank exchange of views and finds that section 30(b)(ii) was not engaged.
107. As the Commissioner does not agree that the exemption in section 30(b)(ii) of FOISA was engaged, he has not gone on to consider the public interest.
108. The Commissioner requires the Authority to disclose these documents to the Applicant (except for the personal information in these messages which was properly withheld under the exemption in section 38(1)(b) of FOISA).

Decision

The Commissioner finds that the Authority partially complied 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 by correctly withholding certain information under section 38(1)(b) of FOISA, the Authority complied with Part 1.

However, by incorrectly withholding certain other information under sections 38(1)(b) and 30(b)(ii) of FOISA and failing to identify information falling within scope of the request, the Authority failed to comply with Part 1 (specifically, section 1(1)).

The Commissioner therefore requires the Authority to disclose the incorrectly withheld information to the Applicant by **10 November 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

26 September 2025