



Scottish Information  
Commissioner  
[www.foi.scot](http://www.foi.scot)

# Decision Notice 241/2025

---

## Proposed Maggie's Centre in Dumfries and Galloway

Authority: Dumfries and Galloway Health Board  
Case Ref: 202500595

### Summary

The Applicant asked the Authority for information relating to a proposed Maggie's Centre. The Authority provided some information, but withheld other information on the basis that disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views. The Commissioner investigated and found that some information was exempt from disclosure but ordered the Authority to disclose other information wrongly withheld.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(b)(ii) (Effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 22 July 2024, the Applicant made a request for information to the Authority. She asked for:
  - (1) "All recorded information held (including information contained in correspondence) relating to a proposed Maggie's Centre in Dumfries and Galloway.
  - (2) This also includes relevant minutes from the Dumfries and Galloway health board endowment committee (excluding the meeting from 18 March 24 which is subject to a separate FOI)."
2. The Applicant stated that she was seeking information since 2014.

3. The Authority responded on 13 August 2024. For part (1) of the request, it disclosed one document, with personal information redacted, and gave notice that any other recorded information held was exempt from disclosure under section 30 of FOISA. For part (2) of the request, it stated that the Endowment Fund is a registered regulated charity and that endowment charities are not bound to respond to requests for information under FOISA. It further stated that endowment charities do not carry out public functions and that, as the Authority did not direct the Endowment Fund's activities, it was unable to comply with part (2).
4. On 26 August 2024, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because she considered that it was in the public interest to publish the information requested and that, given the overlap between the members of the Authority's board and the Endowment Fund's board of trustees, she did not accept that the Authority did not direct the activities of the Endowment Fund.
5. The Authority notified the Applicant of the outcome of its review on 24 September 2024. For part (1) of the request, it overturned its previous reliance upon section 30 of FOISA for all information (other than that contained in the letter already disclosed), on the basis that any information relating to the Maggie's Centre would be held by the Endowment Fund. For part (2) of the request, the Authority upheld its original response.
6. On 24 September 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated she was dissatisfied with the outcome of the Authority's review because she believed the Authority must hold more information than it had identified and because she did not believe the Endowment Fund was completely separate to the Authority.
7. On 19 February 2025, the Commissioner issued [Decision 040/2025](#)<sup>1</sup>, which found that any information in the Authority's possession relevant to the request would be held by the Authority for the purposes of FOISA. He required the Authority to provide the Applicant with a revised review outcome.
8. The Authority notified the Applicant of the outcome of its revised review on 3 April 2025. It disclosed some information to the Applicant and withheld other information under the exemption in section 30(b)(ii) of FOISA.
9. On 14 May 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated she was dissatisfied with the outcome of the Authority's review because she considered that the public interest favoured disclosure.

## 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 15 May 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.

---

<sup>1</sup> <https://www.foi.scot/sites/default/files/2025-03/Decision040-2025.pdf>

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 related to its justification for applying the exemption in section 30(b)(ii) of FOISA.

## **Commissioner's analysis and findings**

13. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
14. As stated in previous decisions, in [Scottish Ministers v Scottish Information Commissioner \[2006\] CSIH 81](#), at paragraph [18], the Court of Session recognised that:

"in giving reasons for his decision, [the Commissioner] is necessarily restrained by the need to avoid, deliberately or accidentally, disclosing information which ought not to be disclosed."
15. In this decision notice, the Commissioner has endeavoured to give as full account of his reasoning as he can, but, by necessity, in this case the comments of the Court of Session are applicable to some aspects.

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

16. Section 30(b)(ii) of FOISA 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. The exemption is subject to the public interest test in section 2(1)(b) of FOISA.
17. In applying the exemption in section 30(b)(ii), the chief consideration is not whether the information constitutes opinions 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.
18. 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 need 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.
19. As with other exemptions involving a similar test, the Commissioner expects authorities to demonstrate a real risk or likelihood that actual inhibition will occur at some time in the near future, not simply a remote or hypothetical possibility.

### ***The Applicant's submissions***

20. The Applicant did not provide any specific submissions challenging the application of the exemption in section 30(b)(ii) of FOISA. However, she did express general dissatisfaction with the Authority's decision to refuse to disclose this information to her and she provided specific submissions (considered later in this decision) on why the public interest favoured disclosure of this information.

### ***The Authority's submissions***

21. The Authority said that the Trustees knew that all the Endowment Charity meetings were held in private (as per their Standing Orders) and that the minutes were not published. It

argued that the level of discussion held within the meetings was more in-depth than in the likes of the public NHS Board meetings. It submitted that the minutes were written in a way that reflected the discussions held and that they contained more detail than those prepared for disclosure submitted into the public domain.

22. The Authority said that, had the Trustees been made aware of the potential for the minutes to be disclosed into the public domain, the minute would not have included as much detail and that this knowledge potentially would have stopped the Trustees speaking so frankly during the discussions. It argued that disclosure of the withheld information would, therefore, prejudice the ability for the Trustees to have a free and frank discussion.
23. The Authority also took the view that disclosure of these minutes (which were, at least by the time of the investigation, overtaken by the decision – announced in August 2025 – to [open a Maggie's Centre](#)<sup>2</sup> in Dumfries and Galloway) could cause confusion and upset regarding a locally contentious matter.

#### *The Commissioner's view*

24. The Commissioner has considered all of the submissions made to him, along with the withheld information under consideration.
25. As the Commissioner noted before, in order for this exemption to be engaged, disclosure of the withheld information would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. In this context, "inhibit" means to restrain, decrease or suppress the freedom with which opinions or options are expressed.
26. Having carefully considered the withheld information, the Commissioner considers the majority of the information falling within the scope of the request to be factual or high-level or to be not expressed in a particularly free or frank fashion. On balance, he is not persuaded, from the submissions he has received or from the content of the information itself, that disclosure of this information would, or would be likely to, result in the inhibition claimed by the Authority (or required for the exemption in section 30(b)(ii) of FOISA to be engaged).
27. Given this conclusion, the Commissioner is not required to go on to consider the public interest test in section 2(1)(b) in relation to this information. He requires the Authority to disclose this information to the Applicant.
28. However, the Commissioner accepts that disclosure of some of the withheld information would, or would be likely to, result in a level of inhibition sufficient for the exemption in section 30(b)(ii) to be engaged. As stated above, he must be careful not to reveal the content of the withheld information. However, he is satisfied that disclosure of certain information (specifically that relating to information on the views and finances of Maggie's) would be likely to inhibit substantially the free and frank exchange of views for the purposes of deliberation on similar topics.
29. Consequently, the Commissioner is satisfied that this information is exempt from disclosure in terms of section 30(b)(ii) of FOISA. Given this conclusion, he is required to go on to consider the public interest test in section 2(1)(b) of FOISA in relation to this information.

#### ***The public interest test***

30. The exemption in section 30(b)(ii) of FOISA is subject to the public interest test in section 2(1)(b). Where this exemption is correctly applied, the Commissioner must consider

---

<sup>2</sup> <https://www.maggies.org/about-us/news/maggies-comes-to-dumfries-and-galloway/>

whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

#### *The Applicant's submissions*

31. The Applicant explained that Maggie's Centres offer support, advice and friendship to people who have cancer and their families and that there had been a lengthy campaign to build a Maggie's Centre in Dumfries. She also noted that Maggie Keswick Jenks, who inspired the cancer support centres, was from Dumfries and that Maggie's Centre was known to be keen to build a centre in their namesake's hometown.
32. The Applicant submitted that one in two people will be diagnosed with cancer in their lifetimes and about 1,000 people in Dumfries and Galloway are diagnosed with cancer every year, according to Public Health Scotland. While the Applicant praised the work of the Authority's oncology unit, she noted pressures on their time and resources and noted that further support could be provided through a Maggie's Centre.
33. The Applicant said that the Endowment Fund had a balance of more than £8m at the end of 2024/25 and that its income during that year was £567,946, with £261,515 coming from donations and legacies. She stated that the Endowment Fund repeatedly appealed for donations from people living in Dumfries and Galloway and said it was committed to the "advancement of health across Dumfries and Galloway".
34. The Applicant therefore disagreed with the Endowment Fund's position that it could not support the initial outlay and ongoing yearly support required for a new Maggie's Centre in Dumfries and Galloway. She submitted that it was in the public interest to properly explain this by giving access to the minutes of the meetings where this topic was discussed and the decision taken.
35. In summary, the Applicant concluded that it was in the public interest of people in Dumfries and Galloway to have a Maggie's Centre built in the region and for the Endowment Fund to fully explain why it had denied them this facility.

#### *The Authority's submissions*

36. The Authority recognised the public interest in disclosing the withheld information in terms of transparency of discussions at the meetings.
37. However, the Authority considered that the following points favoured maintaining the exemption in section 30(b)(ii) of FOISA:
  - All meetings of the Endowment Charity are held in private, meaning that the minutes included more detail than they would have done had they considered they would be disclosed into the public domain. Disclosure of this level of detail would jeopardise the Trustees ability to have free and frank discussions within the private meetings
  - The minutes contain discussions on a number of different topics outwith the Maggie's Centre item, which were discussed in a confidential setting
  - The decision made on 11 August 2025 to support a Maggie's Centre in Dumfries and Galloway now superseded the withheld information within the minutes, disclosure of which could now "cause confusion".
38. The Authority therefore concluded, on balance, that the public interest maintained upholding the exemption in section 30(b)(ii) of FOISA.

### *The Commissioner's view*

39. The Commissioner has considered all of the arguments presented to him in relation to the public interest in withholding or disclosing the withheld information, along with the withheld information itself.
40. The Commissioner must stress that his remit extends only to consideration of whether the Authority complied with Part 1 of FOISA in responding to the Applicant's information request. He has no locus to comment on the merits of the Authority's decision-making regarding the proposed Maggie's Centre.
41. The Commissioner recognises the public interest that exists in relation to discussions relating to the proposed Maggie's Centre and the scrutiny of the Authority's decision-making in relation to that proposal, particularly given the significant financial considerations and implications.
42. The Commissioner notes the Authority's concern that publishing the withheld information, which has now been overtaken by the decision that a Maggie's Centre will open in the area, may lead to confusion. However, his [guidance on the public interest test](#)<sup>3</sup> is clear that the risk of a requester misinterpreting information is a factor that should not be taken into account when applying the public interest test. Where there is a potential for misinterpretation, a public authority can take steps to prevent this by, for example, choosing to provide a commentary which places the information in context.
43. The Commissioner would also take this opportunity to remind the Authority that, when determining where the public interest lies, he must make his assessment in relation to the specific circumstances of the case on each occasion and at the time of the review outcome at the latest (i.e. prior to the decision on 11 August 2025 to support a Maggie's Centre in Dumfries and Galloway). In other words, the Authority's review outcome was carried out at a point where discussions about the new Maggie's Centre had not been finalised.
44. While there is a public interest in transparency of disclosure of all the information in the minutes that relate to a proposed Maggie's Centre in Dumfries and Galloway, this must be balanced against the public interest in the Authority being able to hold internal discussions and debate in a private space in relation to this proposal.
45. The Commissioner acknowledges that the ability of the Authority to do so, safe in the knowledge that information will not routinely be publicly disclosed, will be required on occasion, to allow open and frank exchanges to support informed decision-making. He accepts that the public interest does not lie in disclosing information that would limit such discussion in future.
46. On balance, therefore, the Commissioner finds that the public interest in disclosure of this information is outweighed by that in favour of maintaining the exemption in section 30(b)(ii) of FOISA. He therefore concludes that the Authority was entitled to withhold this information in terms of section 30(b)(ii) of FOISA.

---

<sup>3</sup> <https://www.foi.scot/sites/default/files/2022-03/PublicInterestTestFOISA.pdf>

## **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 some information under the exemption in section 30(b)(ii), the Authority complied with Part 1 of FOISA.

However, by wrongly withholding other information under the exemption in section 30(b)(ii), the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to disclose the wrongly withheld information, by **17 November 2025**. He will write to the Authority to specify the information to be disclosed.

## **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**

**1 October 2025**