



Scottish Information
Commissioner
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Decision Notice 007/2026

Article in The Grayzone

Authority: University of St Andrews

Case Ref: 202500545

Summary

The Applicant asked the Authority for information regarding correspondence related to The Grayzone and an article published by that news website, as well as information regarding contributions by the Authority in relation to the UN Sustainable Development Goals. The Authority refused to confirm or deny whether it held the information requested. The Commissioner investigated and found that the Authority had partially complied with FOISA in responding to the Applicant's request. He required the Authority to issue a revised review outcome in relation to parts (1) and (3) of the Applicant's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1) (Effect of exemptions); 18(1) (Further provision as respects responses to request); 39(1) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 21 February 2025, the Applicant made a request for information to the Authority. He asked for the following information:
 - (1) "Correspondence received by [named individual] of [a specified department] from journalists at The Grayzone between June 2022 and present.
 - (2) Correspondence between [named individual] and any other parties relating to subject matter raised by The Grayzone.

- (3) Who determines the contribution of [the Authority's] researchers in relation to the UN Sustainable Development Goals?"
- 2. By way of background, the Applicant confirmed in his application to the Commissioner that his request related to [a specific article published by The Grayzone](#)¹.
- 3. The Authority responded on 18 March 2025. It notified the Applicant that it was refusing to comply with his request as it considered it to be vexatious, in line with section 14(1) of FOISA.
- 4. On the same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered his request had a reasonable foundation and that the public interest favoured disclosure of the information requested.
- 5. The Authority notified the Applicant of the outcome of its review on 7 April 2025, which fully upheld its original decision.
- 6. On 13 April 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 his request was vexatious.

Investigation

- 7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
- 8. On 30 April 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
- 9. 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 relating to its application of section 14(1) of FOISA.
- 10. During the investigation, the Authority revised its position and applied section 18 of FOISA (neither confirming or denying whether the information existed or were held), in conjunction with section 39(1) of FOISA, to all parts of the request. It later advised the Commissioner that it no longer wished to maintain its reliance on section 14(1) of FOISA.

Commissioner's analysis and findings

- 11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
- 12. As stated in previous decisions, in [Scottish Ministers v Scottish Information Commissioner \[2006\] CSIH 8](#)², at paragraph [18], the Court of Session recognised that:

¹ <https://thegrayzone.com/2025/02/15/secret-nsc-plans-ukraine-resist/>

² https://www.bailii.org/scot/cases/ScotCS/2008/CSIH_08.html

"... 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."

13. 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 18(1) – Neither confirm nor deny

14. Section 18(1) of FOISA allows public authorities to refuse to confirm nor deny whether they hold information in the following limited circumstances:
 - a request has been made to the authority for information, which may or may not be held by it; and
 - if the information existed and were held by the authority (and it need not be), it could give a refusal notice under section 16(1) of FOISA, on the basis that the information was exempt information by virtue of any of the exemptions in sections 28 to 35, 38, 39(1) or 41 of FOISA; and
 - the authority considers that to reveal whether the information exists or is held by it would be contrary to the public interest.
15. Where section 18(1) of FOISA is under consideration, the Commissioner must ensure that his decision notice does not confirm one way or the other whether the information requested actually exists or is held by the authority. This means he is unable to comment in any detail on the Authority's reliance on any of the exemption referred to, or on other matters which could have the effect of indicating whether the information exists or is held by the Authority.
16. In this case, the Authority submitted that, if it held any information falling within the scope of the Applicant's request, it would be exempt from disclosure under section 39(1) of FOISA.
17. It is not sufficient to claim that one or more of the relevant exemptions applies. Section 18(1) of FOISA makes it clear that the authority must be able to give a refusal notice under section 16(1), on the basis that any relevant information (if it existed and were held) would be exempt information under one or more of the listed exemptions.
18. The Commissioner must first, therefore, consider whether the Authority could have given a refusal notice under section 16(1) of FOISA in relation to the information in question (if it existed and were held).

Section 39(1) – Health, safety and the environment

19. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual. This is a qualified exemption and is subject to the public interest test required by section 2(1)(b) of FOISA.
20. As the Commissioner notes in his [briefing on this exemption](#)³, section 39(1) of FOISA does not contain the usual harm test. Instead of the "substantial prejudice" test found in many

³ https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment_2023.pdf

other harm-based exemptions in Part 2 of FOISA, this exemption refers to the "endangerment" of health or safety.

21. The Authority provided submissions explaining why it considered that disclosure of the information requested by the Applicant (if it existed and were held) would, or would be likely to, result in the harm required for the exemption in section 39(1) of FOISA to be engaged.
22. Section 45 of FOISA makes it a criminal offence for the Commissioner or a member of his staff to disclose, without lawful authority, information which he has obtained, or which has been furnished to him, under or for the purposes of FOISA if the information is not at the time of the disclosure, and has not previously been, available to the public from another source.
23. In the absence of lawful authority (and the Commissioner can identify none here that would be relevant for the purposes of section 45), therefore, the Commissioner is therefore unable to reproduce or summarise fully the Authority's submissions, within this decision notice, without breaching the obligation of confidentiality in section 45 of FOISA.
24. The Authority argued that disclosure of the information requested (if it existed and were held) would, or would be likely to, give rise to a risk of harm to the Authority as a whole, particularly in light of recent cyber incidents in other high-profile organisations.
25. For this reason (and other reasons that the Commissioner is unable to summarise in his decision notice without breaching the obligation of confidentiality in section 45 of FOISA), the Authority considered that disclosure of the information requested (if it existed and were held) would, or would be likely to, result in the harm required for the exemption in section 39(1) of FOISA to be engaged.

The Commissioner's view on section 39(1)

26. When considering whether a public authority has the right neither to confirm nor deny whether information exists or is held, the Commissioner must consider the information which could theoretically be held within the scope of the request.
27. For the Commissioner to uphold section 39(1) of FOISA, he must be satisfied that disclosure of the information would, or would be likely to, endanger the physical or mental health or the safety of a living individual (or group). This requires evidence that demonstrates that not only is it possible that disclosure would cause such harm, but that such an eventuality was at least likely to occur.
28. The word "endanger" is broad enough to apply where there is a threat, direct or indirect, to the safety of a person. Since the exemption in section 39(1) of FOISA does not specify that any threat should be imminent before it applies, the threat may be either immediate, or one which would foreseeably arise in the future. The Commissioner believes that for endangerment to be considered likely, however, there must be some well-founded apprehension of danger, such that the prospect of harm could be regarded as a distinct possibility.
29. In this case, the request has three parts and the Applicant confirmed that his request related to a specific article published by The Grayzone.

Parts (1) and (3) of the request

30. The Commissioner has carefully considered the Authority's submissions (including those parts that he is unable to summarise in his decision notice without breaching the obligation of confidentiality in section 45 of FOISA).

31. Having done so, the Commissioner is not persuaded that the Authority has adequately evidenced that disclosure of the information (if it existed and were held) would, or would be likely to, result in either the harm it claimed or the requisite harm for the exemption in section 39(1) of FOISA to be engaged in relation to parts one and three of the Applicant's request.
32. For part (1) of the request, the Commissioner notes that it is commonplace for news media to contact parties named in articles to seek comment and to provide them with the opportunity to respond. This part of the request simply requests correspondence received by the named individual from journalists at The Grayzone over a specified period – and the Commissioner notes that the article in question states that attempts were made to contact the parties named in the article.
33. Part (3) of the request is different in nature to parts (1) and (2), in that it appears unrelated to the article in The Grayzone. Given the terms of part (3) of the request and the information that could fall within scope (if it existed and were held), the Commissioner cannot, having fully considered the Authority's submissions on this point, see what relevant harm could result from disclosure.
34. In all of the circumstances, including reasons he is necessarily restrained from disclosing in this decision notice, the Commissioner is not satisfied that the Authority has adequately demonstrated that disclosure of the information requested in parts (1) and (3) of the request (if it existed and were held) would, or would be likely to, result in the requisite harm for the exemption in section 39(1) of FOISA to be engaged. He therefore finds that the exemption in section 39(1) of FOISA has been wrongly applied to parts (1) and (3) of the request by the Authority in this case.
35. As such, the Commissioner finds the Authority could not have given a refusal notice under section 16(1) of FOISA in response to parts (1) and (3) of the request. He is therefore not required by section 18(1) of FOISA to go on to consider whether the Authority was entitled to conclude that it would be contrary to the public interest to reveal whether the information existed or were held.
36. Consequently, the Commissioner concludes that the Authority was not entitled to refuse to reveal, in response to parts (1) and (3) of the request, whether any information of the type described by the Applicant existed or was held by it in terms of section 18(1) of FOISA. He has set out at the end of his decision notice the steps he requires the Authority to take as a result of this conclusion.

Part (2) of the request

37. The Commissioner has again carefully considered the Authority's submissions (including those parts that he is unable to summarise in his decision notice without breaching the obligation of confidentiality in section 45 of FOISA).
38. For part (2) of the request, the Commissioner considers it necessary to set out what he considers to be the proper interpretation of the request, including what the Applicant meant by "relating to subject matter raised by The Grayzone".
39. As stated above (at paragraph 2), the Applicant confirmed that his request related to a specific article published by The Grayzone. This article states that The Grayzone attempted to contact the named individual (and others) to "solicit comment about their role in proxy war scheme, and about whether [the Authority] was aware it was being used as a base for planning terror attacks against Russia." In the circumstances, the Commissioner considers it

reasonable to treat the above quotation as a broad description of the “subject matter raised by The Grayzone”.

40. The Commissioner is also satisfied that the proper interpretation of “relating to subject matter raised by The Grayzone” is correspondence regarding the subject matter raised in the article, rather than correspondence in response to the subject matter raised in the article).
41. On the basis of the broad description set out above of the subject matter raised in The Grayzone article and, therefore, the nature of the information requested in part (2) of the request, the Commissioner considers that disclosure of this information (if it existed and were held) would, or would be likely to, result in the requisite harm to employees of the Authority (as a group) for the exemption in section 39(1) of FOISA to be engaged.
42. The Commissioner therefore accepts that (assuming the information requested by the Applicant existed and were held by it) the Authority would have been entitled to respond to part two of the Applicant’s request by applying the exemption in section 39(1) of FOISA.
43. The Commissioner is now required to go on to consider the public interest test in section 2(1)(b) in relation to this set of information or whether, in terms of section 18(1) of FOISA, revealing whether the information exists or is held would be contrary to the public interest

The public interest test – section 2(1)(b)

44. Section 39(1) is a qualified exemption, which means that its application is subject to the public interest test in section 2(1)(b) of FOISA. Having decided that the information requested for part (2) of the request (if it existed and were held) would be exempt under section 39(1), the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information (if it existed and were held) would be outweighed by the public interest in maintaining the exemption.

The Applicant’s submissions on the public interest

45. The Applicant explained that part (2) of his request related to an article published by the Grayzone claiming the involvement of staff members of the Authority in providing advice on prolonging the war in Ukraine. He said that the information requested “may either support the article or put a different perspective on it”. Either way, he argued that his request had serious value.

The Authority’s submissions on the public interest

46. The Authority provided submissions on the balancing exercise it had undertaken to determine where the public interest lay. The Commissioner is again unable to reproduce or summarise fully the Authority’s submissions, within this decision notice, without breaching the obligation of confidentiality in section 45 of FOISA.
47. However, the Authority concluded that the public interest was best served by the continued application of the exemption in section 39(1) of FOISA to prevent the likelihood of the harm that it described above (at paragraph 24) arising from disclosure of the information requested (if it existed and were held).

The Commissioner’s view on the public interest

48. The Commissioner has carefully considered all of the submissions received regarding the public interest test.

49. The Commissioner accepts that there is general public interest in disclosure of the requested information, should it exist and be held by the Authority. He has set out (at paragraph 39) his view on what he considers reasonable to treat as a broad description of the “subject matter” of The Grayzone article. However, even more broadly, part (2) of the request relates to Russia’s invasion of Ukraine – a matter clearly of significant concern and interest to the public.
50. The Commissioner accepts that disclosure of the information requested (if it existed and were held) would provide openness and transparency and could inform an understanding of the accuracy or veracity of The Grayzone article.
51. Nevertheless, a balancing exercise must be undertaken. The Commissioner has found that disclosure of the information requested for part (2) of the request (if it existed and were held) would, or would be likely to, result in the requisite harm for the exemption in section 39(1) of FOISA to be engaged. This means that the public interest arguments in favour of disclosure must be strong, to outweigh the public interest in ensuring that this harm would not arise (or be likely to arise) as a result of such disclosure.
52. In all of the circumstances of the case, the Commissioner finds that the public interest arguments put forward by the Applicant are not strong enough to outweigh the public interest in ensuring that individuals are not endangered. He therefore finds that the public interest in maintaining the exemption in section 39(1) of FOISA would outweigh any public interest in disclosure of the information (if it existed and were held).
53. On balance, the Commissioner is satisfied that the Authority could have given a refusal notice under section 16(1) of FOISA in relation to part (2) of the request. This is on the basis that the information requested in part (2) of the request (if it existed and were held) would have been exempt from disclosure under section 39(1) of FOISA.

The public interest test – section 18(1)

54. Having accepted that the Authority could give a refusal notice under section 16(1) of FOISA in relation to part two of the request, the Commissioner must go on to consider whether the Authority was entitled to conclude that it would be contrary to the public interest to reveal whether the information existed or was held.
55. The Commissioner has taken into account the public interest arguments made by both the Applicant and the Authority.
56. In all of the circumstances, including reasons he is necessarily restrained from disclosing in this decision notice, the Commissioner is satisfied that confirming or denying whether the information requested for part (2) of the request existed or was held would, in itself, reveal information of sensitivity that would be capable of undermining the protection afforded by the exemption in section 39(1) of FOISA. He considers that this would be contrary to the public interest.
57. The Commissioner therefore finds that the Authority was entitled to refuse to confirm or deny in relation to part (2) of the request, in line with section 18(1) of FOISA, whether it held the information requested by the Applicant, or whether that information existed.

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 refusing to reveal, in terms of section 18 of FOISA, whether the requested information in part (2) of the request existed or was held by it, the Authority complied with Part 1 of FOISA.

However, the Commissioner finds that, by refusing to reveal, in terms of section 18 of FOISA, whether the requested information in parts one and three of the request existed or were held by it, the Authority failed to comply with Part 1 (in particular, section 1(1)) of FOISA.

The Commissioner therefore requires the Authority to reveal to the Applicant whether the information requested in parts (1) and (3) of the request exists or is held by it. If the information is held, he requires the Authority to provide that information to the Applicant, or to issue a refusal notice in line with the requirements of section 16 of FOISA (otherwise than in terms of section 39(1)). If the information is not held, he requires the Authority to give notice of this, in line with the requirements of section 17 of FOISA.

The Commissioner requires the Authority to do this **by 2 March 2026**.

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

14 January 2025