



Scottish Information
Commissioner
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Decision Notice 018/2026

Meetings with Israeli Government representatives

Authority: Scottish Ministers

Case Ref: 202501077

Summary

The Applicant asked the Authority for correspondence related to meetings with representatives of the Israeli Government. The Authority disclosed some information and withheld other information under various exemptions.

The Applicant challenged the withholding of a small amount of information in two documents. The Commissioner investigated and found that the Authority had been entitled to withhold this particular information.

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(c) (Prejudice to effective conduct of public affairs); 36(1) (Confidentiality); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 21 August 2024, the Applicant made a request for information to the Authority. He asked for any correspondence since January 2024 relating to meetings with representatives of the Israeli embassy in the UK or meetings with other representatives of the Israeli government.
2. The Authority responded on 18 September 2024. The Authority informed the Applicant it was withholding all of the information he had requested under section 32(1)(a) of FOISA and stated that the public interest favoured upholding the exemption.

3. On 19 September 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because the Authority had not explained why or how publishing this correspondence could prejudice substantially relations between it and another state and he believed the public interest favoured disclosure.
4. The Authority notified the Applicant of the outcome of its review on 15 October 2024. The Authority upheld its decision to withhold all of the information under section 32(1)(a)(i) of FOISA. The Authority also notified the Applicant that some of the information was being withheld under section 38(1)(b) of FOISA because it was the personal data of third parties.
5. On 24 June 2025 (and following an appeal to the Commissioner that resulted in [Decision 114/2025¹](#)) the Authority issued a second review to the Applicant which disclosed some information, identified additional information (5 documents) and withheld information under sections 29(1)(b) and (d), 30(b)(i) and (ii), 30(c), 32(1)(a)(i), 36(1) and section 38(1)(b) of FOISA.
6. On 5 July 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he was dissatisfied that information had been withheld under section 30(c) and section 36(1) of FOISA. He considered that there was a strong public interest in disclosure of the information.

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 1 August 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 under section 30(c) and section 36(1) of FOISA. The Authority provided the information and 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. These related to its reasons for withholding information under section 30(c) and section 36(1) of FOISA and how it considered the public interest.

Commissioner's analysis and findings

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

Scope of the investigation

11. As noted above, in this case the Applicant confirmed that he was only challenging the Authority's reliance on section 30(c) and section 36(1) of FOISA.

¹ <https://www.foi.scot/decision-1142025>

12. Furthermore, following the Commissioner's [Decision 114/2025](#), the Applicant confirmed that he was not challenging the withholding of operational email addresses under section 30(c).
13. Given this, the Commissioner will only consider whether the Authority has correctly applied the exemptions in section 30(c) and 36(1) of FOISA to the withheld information.

The withheld information

14. The Authority is withholding two documents from the Applicant, both of which are email exchanges between internal correspondents.

Document 1

15. Some information is withheld under section 36(1) and other information is withheld under section 30(c) of FOISA (the remainder of document 1 has been disclosed).

Document 2

16. Document 2 is being withheld in its entirety under section 36(1) of FOISA.
17. The Commissioner will now go on to consider the Authority's application of these exemptions in withholding the information in documents 1 and 2.

Section 36(1) - Confidentiality

18. During the investigation, the Authority confirmed that it was relying on legal advice privilege to withhold all of the information in document 2 and some paragraphs in document 1.
19. Section 36(1) of FOISA exempts from disclosure information in respect of which a claim of confidentiality of communications could be maintained in legal proceedings. One type of communication covered by this exemption is that to which legal advice privilege, a form of legal professional privilege, applies.
20. Legal advice privilege covers communications between lawyers and their clients in the course of which legal advice is sought or given. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled:
 - The information must relate to communications with a professional legal adviser, such as a solicitor or advocate
 - The legal adviser must be acting in their professional capacity, and
 - The communications must occur in the context of the legal adviser's professional relationship with their client.
21. Before information can attract legal advice privilege, it must be information for which a claim to confidentiality of communications could be maintained in legal proceedings. The claim must be capable of being sustained at the time the exemption is claimed: the information must possess the quality of confidence at that time, and so cannot have been made public, either in full or in a summary substantially reflecting the whole. Where confidentiality has been lost in respect or part or all of the information under consideration, any privilege associated with that information is lost.

The Authority's comments on section 36(1)

22. The Authority submitted that all of the information withheld under section 36(1) of FOISA related to communications between in-house legal advisers acting in their professional capacity and with the Authority as their client.

23. The Authority submitted that all of the material was either made for the principal or dominant purpose of giving or seeking legal advice, and it argued that disclosure would breach legal professional privilege by divulging information about the points being considered by lawyers the extent of their advice and the issues being flagged up for further consideration. It submitted that all of the necessary conditions for legal advice privilege to apply were satisfied.
24. The Authority commented that none of this information had been shared with anyone outside the Authority and, as such, legal professional privilege had not been waived.

The Commissioner's view on section 36(1)

25. Having considered the withheld information, the Commissioner is satisfied that it meets the conditions for legal advice privilege to apply.
26. The Commissioner is also satisfied that the confidentiality of the legal advice has not been lost or waived through being shared with limited relevant employees within the Authority.
27. The Commissioner therefore considers that the information in question was confidential at the time the Authority dealt with the Applicant's information request and requirement for review (and that it remains so now).
28. The exemption in section 36(1) is a qualified exemption, which means that it is subject to the public interest test set out in section 2(1)(b) of FOISA. The exemption can only be upheld if the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

The public interest test – section 36(1)

The Applicant's comments on the public interest

29. The Applicant submitted that there was a strong public interest in the information being published, because he considered that the public had a right to know if certain parties within the Authority wished to take a different position in the statement put out by Angus Robertson and in the government's approach to relations with Israel going forward.
30. The Applicant submitted that it was in the public interest to know whether the Authority was advised to change its position by lawyers.
31. The Applicant commented that, since his previous application to the Commissioner (resulting in [Decision 114/2025](#)), this matter had attracted extensive media attention including a front page story in a national newspaper. The Applicant noted that some Members of the Scottish Parliament had also taken an interest and had made comments on the subject. Furthermore, the Applicant noted that the First Minister had paused grant funding to companies exporting arms to Israel, having previously suggested that to do so would be against the law.

The Authority's comments on the public interest

32. The Authority accepted that there was a public interest in disclosure to promote openness and transparency, and it acknowledged that releasing this information could help greater public understanding of the Scottish Government's policy on the public reporting of outcomes of complaints involving ministers.

33. However, the Authority considered that there was a very strong public interest in maintaining the exemption relating to legal professional privilege in order to ensure confidentiality of communications. The Authority submitted that it was important that lawyers could provide free and frank legal advice which considered and discussed all issues and options without fear that that advice may be disclosed and, as a result, potentially taken out of context.
34. The Authority argued that there was a public interest in ensuring that the Scottish Government's position on any issue was not undermined by the disclosure of legal advice, and it commented that legal advisers needed to be able to present the full picture to their clients. The Authority submitted that it was in the nature of legal advice that it often set out the possible arguments both for and against a particular view, in order to weigh up the relative merits of each position.
35. Given the circumstances of this case, it was the Authority's view that, in areas such as this which are the subject of intense political debate, an expectation that legal advice could be released would inevitably lead to the legal advice being much more circumspect and therefore less effective.
36. For all of these reasons, the Authority argued that was a strong public interest in protecting the confidentiality of this information in order to ensure that it was able to discuss and take policy decisions in full possession of thorough and candid legal advice and to ensure it could take decisions in a fully informed legal context, having received legal advice in confidence as any other client would.
37. The Authority concluded that, on balance, the public interest in maintaining the exemption outweighed that of disclosure, given the overriding public interest in maintaining the confidentiality of communications between lawyers and their clients and the public interest in allowing for full and detailed internal consideration of policy relating to international relations with Israel.

The Commissioner's view on the public interest - section 36(1)

38. The Commissioner acknowledges the public interest in the transparency and accountability expected of all authorities and that disclosure of the information requested would go some way towards satisfying that interest.
39. However, the Commissioner also acknowledges that there is a strong inherent public interest, recognised by the courts, in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds.
40. In a freedom of information context, the strong inherent public interest in maintaining legal professional privilege was emphasised by the High Court (of England and Wales) in the case of [Department for Business, Enterprise and Regulatory Reform v Information Commissioner and O'Brien \[2009\] EWHC 164 \(QB\)](#)². Generally, the Commissioner will consider the High Court's reasoning to be relevant to the application of section 36(1) of FOISA.

² [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2009/164.html&query=\(title:\(+o%27brien+\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2009/164.html&query=(title:(+o%27brien+)))

41. The Commissioner acknowledges that there will be occasions where the significant public interest in favour of withholding legally privileged communications may be outweighed by a compelling public interest in disclosing the information (and he has on occasion required disclosure of such information where the particular circumstances of the appeal supported it). For example, disclosure may be appropriate where (the list is not exhaustive):
- the privileged material discloses wrongdoing by/within an authority
 - the material discloses a misrepresentation to the public of advice received
 - the material discloses an apparently irresponsible and wilful disregard of advice
 - the passage of time is so great that disclosure cannot cause harm.
42. While the Commissioner accepts, having examined the withheld information, that the contents of the advice would be of interest to the Applicant, he does not consider that the circumstances of this case reflect any of the scenarios described above (or any other reason for disclosure of equal force).
43. The Commissioner has carefully considered the Applicant's argument that it would be in the public interest to see any dissent or differing views amongst the participants in the correspondence. However, he is persuaded by the Authority's argument that FOI law affords public authorities a private space in which to receive and consider advice from legal advisors acting in their professional capacity.
44. The Commissioner must take account of the important public interest in legal professional privilege and the public interest in allowing public authorities to obtain confidential legal advice.
45. The Commissioner accepts that there is a strong public interest in a Scottish public authority being able to receive full, unhindered legal advice. Without such comprehensive advice being available to the Authority, its ability to come to fully formed decisions would be restricted, which would not be in the public interest.
46. Consequently, in this case, the Commissioner is satisfied that the Authority correctly applied section 36(1) of FOISA to the information withheld under this exemption in document 1 and to all of the information in document 2.
47. He will now go on to consider the remaining information in document 1 that the Authority withheld under section 30(c) of FOISA.

Section 30(c) – Substantial prejudice to the effective conduct of public affairs

48. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
49. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b). This is a broad exemption, and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.

50. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur: therefore, the authority needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.

The Authority's comments on section 30(c)

51. The Authority confirmed that it relied on section 30(c) of FOISA to withhold some of the information in document 1.
52. The Authority submitted that disclosure would hinder its ability to conduct business effectively as the draft statement and the lines redacted were removed or altered in the final release and therefore did not reflect the settled position of the government. It argued that disclosing unrefined lines would negatively affect the Scottish Government's ability to go through the drafting process effectively.
53. The Authority submitted that a space in which ministers and policy officials deliberate and come to a final version of a statement must be protected, as the discussion points may be viewed differently between officials and Ministers. In support of its view, the Authority gave an example that some lines or sections may be altered to ensure accuracy and consistency of its position on the matter. It explained that its officials may also have differences of opinion on the points which should be included and how to best phrase these points, understanding the impact that a public statement may have.
54. The Authority argued that it was vital that this private space was protected in order to allow officials to robustly deliberate and provide considered advice to ministers. It submitted that a private space allowed for all options to be properly considered, so that good decisions could be taken that reflect the outcome of the meeting that took place. The Authority argued that premature disclosure was likely to undermine the drafting process, which in turn would undermine the quality of the decision making process and the final statement decided upon.
55. The Authority argued that it was important that Ministers and officials had the ability to work from draft statements in which they were free to make changes to as and when required in a private space, with the knowledge that their previous drafts would not be disclosed at any time in the near future. The Authority also argued that it was important that Ministers and officials had a private space to discuss provisional drafts, knowing that these might change for a variety of reasons, without these drafts becoming public.

The Commissioner's view on section 30(c)

56. The Commissioner has considered the information in document 1 that the Authority is withholding under section 30(c) of FOISA. The information withheld under section 30(c) comprises four small paragraphs in which the Authority comments on its position in relation to the subject matter of the request.
57. The paragraphs withheld under this exemption are clearly in draft and advice is sought on their content. The Commissioner accepts the Authority's view that these are matters which necessitate discussion in a private space in order that the Scottish Government's position can be developed, debated and refined before it is communicated to external parties and the general public.

58. The Commissioner also notes that the subject of draft statement relates to the sensitive matter of the Scottish Government's relationship with Israel; a matter of ongoing interest. He considers that when topics are arguably sensitive in nature, that it is vital that authorities have a private space to debate and form finalised opinions prior to releasing a final view. He accepts that disclosure of the early stages of this process, before a final view was taken and when internal opinions were being sought, would substantially inhibit future debate and could lead to uninformed and poorly thought-out decisions being reached.
59. For these reasons, the Commissioner is satisfied that disclosure of the information would, or would be likely to, prejudice substantially the effective conduct of public affairs. He is satisfied that the exemption is engaged for this information.
60. He will now go on to consider the public interest test in section 2(1)(b) of FOISA.

The public interest test – section 30(c)

61. The public interest is not defined in FOISA but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

The Applicant's comments on the public interest

62. The Applicant considered there was a strong public interest in disclosure of this information for the same reasons given in paragraphs 29 to 31

The Authority's comments on the public interest

63. The Authority recognised the public interest in release of the information for reasons of openness, transparency and accountability.
64. However, the Authority considered there to be a greater public interest in allowing officials a private space within which to communicate as part of the process of exploring and refining the draft notes before reaching a settled view. The Authority contended that Ministers and officials needed a private space to rigorously and candidly explore the account of what happened at the meeting, before reaching a settled decision. It argued that disclosure of this document would diminish that private space and could result in the release of inaccurate information into the public domain.
65. The Authority submitted that the public interest lay in upholding the exemption.

The Commissioner's view on the public interest – section 30(c)

66. The Commissioner agrees that there is always a general public interest in openness and accountability, particularly relating to the statutory functions of public authorities. Openness and accountability allow effective scrutiny and reassure the public, where appropriate.
67. He has considered the information withheld under section 30(c) carefully alongside the submissions from the Applicant and the Authority.
68. Whilst the Commissioner accepts that it may be of interest to the Applicant and others to view the Authority's deliberations which led to the development of a media statement in relation to the meeting that took place, this does not necessarily equate with those matters which are in the public interest.

As noted above, the public interest does not mean “of interest to the public” but “in the interest of the public”, i.e. disclosure must serve the interests of the public.

69. The Commissioner has already accepted that disclosure of the withheld information in question would, or would be likely to cause substantial prejudice to the effective conduct of public affairs in this case. He is persuaded by the Authority’s arguments that there is a stronger public interest in maintaining the private space which allows the Authority to reach a settled position and, in these specific circumstances, to develop a media statement.
70. On balance, 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(c).
71. Accordingly, the Commissioner has concluded that the Authority was entitled to withhold the remaining information in terms of section 30(c) of FOISA.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

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.

David Hamilton

Scottish Information Commissioner

09 February 2026