



Scottish Information
Commissioner
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Decision Notice 291/2025

Briefing for Eljamel Independent Clinical Review

Applicant: The Applicant

Authority: Scottish Ministers

Case Ref: 202500995

Summary

The Applicant asked the Authority for the briefing document used to find and secure the Chair of the Independent Clinical Review (ICR) for former patients of Mr Sam Eljamel. The Authority disclosed information in response to the request, subject to some third-party personal data redactions. The Applicant was dissatisfied because he did not consider this information to be what he had requested. The Commissioner investigated and found that the Authority had failed to comply fully with FOISA in responding to the Applicant's request. However, the Commissioner was satisfied, by the close of his investigation, that the Authority had identified all information falling within the scope of the Applicant's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 29 March 2025, the Applicant made a request for information to the Authority. Referring to information he had obtained from a prior information request, he asked for "the briefing document used to find and secure the Chair [of the ICR]". He specified that this information should include "any variants/drafts which may have been used during refinement and negotiation". He also asked that the Authority provide him with:

- a “timeline” for these documents alongside the documents themselves, which should show when these came into existence and when they were shared with “notable people” within the Authority
- any relevant communications between the Authority and others that showed when these documents were circulated.

2. By way of background¹, Mr Eljamel worked as a neurosurgeon at Ninewells Hospital in Dundee between 1995 and 2013. He was suspended by NHS Tayside following concerns raised by patients. Two investigations have been established: a public inquiry led by Lord Weir and an ICR led by Professor Stephen Wigmore.
3. The Authority responded to the Applicant’s request on 2 May 2025. It withheld the information requested under the exemption in section 30(b)(i) of FOISA and explained why.
4. On 7 May 2025, the Applicant wrote to the Authority requesting a review of its decision. He was dissatisfied with the Authority’s decision because, while he could understand why documentation up to the final briefing might be exempt under section 30(b)(i) of FOISA, he would expect that the final briefing document was a statement of intent and, being final, should therefore be made available. He asked to receive “the final briefing document” because it was “imperative” that the public were able to review “what was finally asked of an appointment of the Chair of the ICR”.
5. The Authority notified the Applicant of the outcome of its review on 5 June 2025, in which it revised its position and disclosed information to the Applicant. It provided a copy of an extract of a submission to the Cabinet Secretary for NHS Recovery, Health and Social Care on 6 November 2023 recommending that the Cabinet Secretary agree to Professor Wigmore chairing the ICR. It was provided as an extract because some of the information within the full document fell outwith the scope of the Applicant’s request. In addition, a small amount of information that fell within scope was withheld as third-party personal data under the exemption in section 38(1)(b) of FOISA.
6. On 24 June 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 had requested the “briefing document that was provided to the prospective Chair” by the Authority and it had failed to provide him with that.

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 31 July 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 related to how it established what information it held that fell within the scope of the Applicant’s request.

¹ <https://www.gov.scot/groups/eljamel-independent-clinical-review/>

10. During the investigation, the Authority reconsidered its response to the Applicant's request and determined that it held additional information (i.e. a letter of appointment sent to Professor Wigmore after he had volunteered to chair the ICR) that fell within scope.
11. The Authority disclosed this additional information to the Applicant, subject to the redaction, under the exemption in section 38(1)(b) of FOISA, of a small amount of third-party personal data. It explained that Professor Wigmore "volunteered" for the role of Chair early on, so it did not have "any internal documents prepared that were to be used to attract candidates for the role", which was why the information it held was limited.
12. In response to the disclosure of this additional information, the Applicant confirmed that he still required a decision from the Commissioner as he believed that the Authority held more information that fell within the scope of his request than it had identified and disclosed to him.

Commissioner's analysis and findings

13. The Commissioner has considered all the submissions made to him by the Applicant and the Authority.
14. The Applicant's dissatisfaction with the Authority's response to his request was limited in his requirement for review to his belief that it had not disclosed "the final briefing document" to the prospective Chair of the ICR. The Commissioner's decision notice will therefore only consider this matter: it will not consider whether the Authority was entitled to withhold a small amount of third-party personal data under the exemption in section 38(1)(b) of FOISA.

Section 1(1) – General entitlement

15. 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 public authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
16. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold.
17. 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.
18. 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) held by the public authority.

The Applicant's submissions

19. In his application, the Applicant explained that he considered that the Authority had failed to provide the briefing document he had requested. He said that it appeared that the Authority

had used public funds to appoint Professor Wigmore as Chair of the ICR without a briefing document outlining what the ICR should do.

20. While there may now be terms of reference for the ICR, the Applicant said that these were created after the establishment of the ICR process and Professor Wigmore's appointment as Chair. He confirmed that he wanted to see the "briefing document" that was provided to the prospective Chair of the ICR by the Authority (which any Chair would have had to review before accepting) and said that it had failed to disclose this to him.
21. The Applicant referred to information disclosed by the Authority which mentioned meetings between Professor Wigmore and the Authority in September and November 2023. At the latter meeting, Professor Wigmore confirmed that he would in principle be ready to accept the role of establishing and chairing the ICR. The Applicant said that he expected that a "briefing document" was established at or around these meetings and that the Authority had failed to disclose this information to him.
22. As stated above, the Applicant confirmed, in response to the disclosure of additional information by the Authority during the investigation, that he still required a decision from the Commissioner as he believed that the Authority held more information that fell within the scope of his request than it had identified and disclosed to him. More specifically, he said that what the Authority had disclosed still did not answer his question and that it was "inaccurate".
23. The Applicant also referred to information that he had received from the Authority on 10 November 2025 in response to a related but separate information request. He said that he did not consider that any of this information explained how the Authority was "able to appoint someone without a full brief, and use public money in the way they have". He added that he was unsure why this information had not been disclosed by the Authority in response to the information request being considered in this case.

The Authority's submissions

24. The Authority explained that, at initial response and review stage, it had interpreted the Applicant's request as pertaining to ministerial briefings and/or submissions on the appointment of the Chair of the ICR. On reflection, it acknowledged that this interpretation was too narrow as it did not consider briefing documents that the Applicant may have meant in terms of securing the Chair of the ICR.
25. The Authority said that it now interpreted the Applicant's request to have asked for "briefing documents" that were used to "secure" the Chair of the ICR. It considered that this included a letter of appointment it had sent to Professor Wigmore after he had volunteered to take up the role of Chair of the ICR. For clarity, it confirmed that it now interpreted "briefing documents" to encompass this letter of appointment as it contained the role description and the terms of the role of Chair of ICR (which Professor Wigmore ultimately agreed to). It disclosed this document to the Applicant during the investigation.
26. Other than the letter of appointment that it disclosed to the Applicant during the investigation, the Authority confirmed that it held no other documents that could be interpreted as a "briefing" document. It explained that this was because Professor Wigmore was appointed as Chair of the ICR following him proactively sending an email to the Chief Medical Officer. In other words, there was no brief prepared to seek or procure an appointee. It said that, given the unique experience and eminence of Professor Wigmore, the process that followed

was relatively straightforward, without the usual processes and procedures that might otherwise accompany such an appointment.

27. The Authority provided the Commissioner with details of the searches it had carried out to locate information relevant to the Applicant's request – in response to the initial request, at review stage and during the investigation. It explained that it had its electronic filing system (eRDM) in the file that was the central location for all matters related to the ICR. It set out in detail the search terms used, the number of documents located and those that potentially fell in scope of the Applicant's request. The search terms used included the following: "Wigmore" and "minister"; "Wigmore" and "Submission"; "Wigmore" and "Briefing" and "ICR chair".
28. In response to further questions from the Commissioner, the Authority confirmed that no job description or person specification for the role of Chair of the ICR were developed before Professor Wigmore offered his assistance in September 2023.
29. The Authority also confirmed that no formal process was undertaken to identify prospective Chairs for the ICR. This was because Professor Wigmore wrote to the Chief Medical Officer on 4 September 2023 to offer his assistance if the Authority was considering a public inquiry or some other less formal process. As per information disclosed to a previous information request, officials from the Authority then contacted Professor Wigmore to outline the current proposal for an ICR.

The Commissioner's view

30. The Commissioner has taken account of the submissions provided by the Applicant, in which he explained why he believed that the Authority held further information relevant to the "the final briefing document" to the prospective Chair of the ICR.
31. As stated above, the Authority located further information relevant to the Applicant's request after it had issued the review outcome. In failing to take adequate steps to identify, locate and provide all the relevant information at the time it dealt with the Applicant's request and requirement for review, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA.
32. However, having considered all relevant submissions and the terms of the Applicant's request and requirement for review, the Commissioner accepts that (by the close of the investigation) the Authority's interpretation of the information requested by the Applicant was reasonable and that it took adequate, proportionate steps in the circumstances to establish what information it held falling within the scope of the request.
33. The Commissioner considers that the Authority's searches were (by the close of the investigation) reasonable, in the sense of who it asked to carry out the searches and the locations searched; he finds that they would be capable of locating the information requested. He is therefore satisfied, on balance, that (by the close of the investigation) the Authority identified and located all of the relevant information it held.
34. While the Applicant believed and expected further information to be held by the Authority, the Commissioner is satisfied that (by the close of the investigation) this was not the case. He has no locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information the authority actually holds.
35. However, the Commissioner accepts the Authority's position (and confirmation) that no job description or person specification for the role of Chair of the ICR were developed and that

no formal process was undertaken to identify prospective candidates for Chair of the ICR because Professor Wigmore had already volunteered his interest and expertise. As such, he accepts that the Authority holds limited information relevant to the specific terms of the Applicant's request and requirement for review (i.e. "the final briefing document").

36. Given that the is satisfied that he Authority identified and located all the relevant information it held by the close of the investigation (which it has disclosed, subject to some redactions for personal data and out of scope information, to the Applicant), the Commissioner does not require the Authority to take any action regarding this failure, in response to the Applicant's application.
37. The Commissioner understands why the Applicant thought that the information disclosed to him in response to his related but separate information request should have been disclosed in response to the information request being considered in this case.
38. However, having considered the information disclosed to the Applicant in response to his related but separate request, the Commissioner is satisfied that this information does not constitute "the final briefing document" to the prospective Chair of the ICR. As stated above (at paragraph 14), it is this information that the Applicant's request in this case was, by virtue of his requirement for review, limited to. (For the avoidance of doubt, the Commissioner makes no finding in respect of the Authority's compliance with FOISA in respect of its response to the Applicant's related but separate request.)

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Specifically, the Commissioner finds that, by failing to identify and locate all of the relevant information it held in response to the Applicant's request, the Authority failed to comply with section 1(1) of FOISA.

However, given that the Authority identified and located all the relevant information it held by the close of the investigation (which it has disclosed, subject to some redactions for personal data and out of scope information, to the Applicant), the Commissioner does not require the Authority to take any action regarding this failure, in response to the Applicant's application.

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.

Cal Richardson
Deputy Head of Enforcement

10 December 2025