



Scottish Information  
Commissioner  
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# Decision Notice 022/2026

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## Policy documents relating to practices to follow regarding unaccompanied asylum-seeking children

Authority: City of Edinburgh Council  
Case Ref: 202501029

### Summary

The Applicant asked the Authority for any policy documents held relating to decision making around unaccompanied asylum-seeking children. The Authority provided some information but withheld specific policy documents, arguing that disclosure would be likely to prejudice substantially the free and frank exchange of views. The Commissioner investigated and found that whilst the Authority had interpreted the request too narrowly it had correctly withheld some information. He required the Authority to carry out further searches and issue a revised review outcome, in addition to disclosing the remainder of the information 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 16 December 2024, the Applicant made a request for information to the Authority. They asked for the following information:
  - I. Any plans, policy documents, guidance, advice or any other documents you hold which set out the steps you take to accommodate unaccompanied asylum-seeking children aged 16 or over.

- II. Any plans, policy documents, guidance, advice or other documents you hold which set out the remit and operation of the '16+ housing panel' including to whom it applies, and the criteria followed for decision making.
  - III. Any plans, policy documents, guidance, advice or other documents you hold which set out the steps you take to assess whether there are reasonable grounds to believe that an unaccompanied asylum-seeking child is vulnerable to becoming a victim of human trafficking or criminal exploitation.
  - IV. How many unaccompanied asylum-seeking children aged 16 or over have [the Authority] accommodated under s25 of the Children (Scotland) Act 1995 in the last 12 months?
  - V. How many of those unaccompanied asylum-seeking children have been placed in adult homelessness accommodation (or similar) through [the Authority's] housing department?
  - VI. How many domestic children aged 16 or over have [the Authority] accommodated under s25 of the Children (Scotland) Act 1995 in the last 12 months?
  - VII. How many of those domestic children have been placed in adult homelessness accommodation (or similar) through [the Authority's] housing department.
2. The Authority responded on 17 January 2025. The Authority withheld information which would fulfil parts I, II and III of the request, advising that the policy documents were currently in draft form and awaiting due process and sign-off. The Authority relied on the exemption in section 30(b)(ii) of FOISA for withholding this information, arguing that the disclosure of the documents would inhibit substantially the free and frank exchange of views amongst stakeholders and decision makers, both internally and externally for the purposes of deliberation. It further observed that the public interest lay in favour of protecting the space for officers to deliberate openly. The Authority provided information in response to the remaining parts of the request.
  3. On 18 February 2025, the Applicant wrote to the Authority requesting a review of its decision in relation to parts I, II and III of their request. The Applicant stated that they were dissatisfied with the decision because they did not agree that the fact the documents were in draft form should preclude them from being disclosed, given the exemption relied upon was not a class-based exemption.
  4. The Authority notified the Applicant of the outcome of its review on 19 March 2025. The Authority upheld its initial response, relying on section 30(b)(ii) for withholding the draft policy documents from the Applicant and explaining that it required a space away from public scrutiny to protect the integrity of the ongoing deliberation process. It upheld its earlier conclusion on the public interest.
  5. On 1 July 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the Authority's review in relation to parts I, II and III, because they did not agree the exemption in section 30(b)(ii) applied and they did not consider there was any justification for the Authority to withhold the information. They also disagreed with the Authority's view of the public interest test, arguing that there was a stronger public interest in disclosure of the information as this would enable scrutiny, contribute to the administration of justice for the children concerned and was likely to contribute to a debate on a matter of public interest.

## Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 4 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. The Authority provided the information, and the case was allocated to an investigating officer.
8. 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 sought justification from the Authority as to why it considered the exemption in section 30(b)(ii) to be applicable to the information in the draft documents, together with its consideration of the application of the public interest test. Comments were also sought from the Authority in relation to the likely timescale involved in finalising the information in the draft documents.
9. The Applicant was also invited to provide any further comment they wished to make as to why they considered the balance of the public interest to favour disclosure of the information being withheld.

## Commissioner's analysis and findings

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

### ***Section 1(1) of FOISA – General entitlement***

11. 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.
12. 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.
13. 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.
14. The Applicant's request, as written, seeks any plans, policy documents, guidance, advice or any other documents held in relation to various aspects of the Authority's assessment and accommodation of Unaccompanied Asylum-Seeking Children (UASC).
15. Despite the wide-ranging scope of the Applicant's request, the Commissioner notes that the information identified by the Authority in its response to the request is limited to just three draft documents, described as procedure/policy documents in progress.

16. However, the Commissioner understands from reading the Authority's submissions that although the withheld information concerns procedure/policy documents in progress, current decision making around this service provision is informed by internal guidance as well as that from external sources. The Authority did not, however, make this clear to the Applicant in its response to either their request or requirement for review.
17. It is apparent from reading the Authority's submissions that other recorded information is held by it which would be likely to fall within scope of the Applicant's request.
18. The Commissioner asked the Authority to describe and provide evidence of the searches it had carried out, as well as explaining how it had identified information relevant to this request. The Authority informed the Commissioner of where the withheld information was held but did not provide evidence of the searches carried out.
19. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it holds no more recorded information than it has identified and located in response to the request.
20. Given the admission of the Authority that it currently relies on other policy and guidance to inform its decision making and its failure to mention this in its responses to the Applicant, the Commissioner finds that the Authority did not carry out adequate or proportionate searches to determine what information it held falling within scope of the Applicant's request when that request was received.
21. Consequently, the Commissioner requires the Authority to consider the recorded information it does hold on which it bases its current decision making and carry out further searches, to determine whether any other relevant recorded information is held which would fulfil parts I, II and III of the Applicant's request.

***Section 30(b)(ii) - free and frank exchange of views***

22. As mentioned above, the Authority has relied on the exemption in section 30(b)(ii) of FOISA for withholding information in three documents from the Applicant.
23. 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. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
24. 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 for the purposes of deliberation. The inhibition in question must be substantial and therefore of real and demonstrable significance.
25. 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.
26. 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 that it is a remote or hypothetical possibility.

### *The Authority's submissions*

27. The Authority advised that it has relied on Scottish Government guidance and its own Looked After and Accommodated Children (LAAC) procedures to make decisions up to this point in relation to unaccompanied asylum-seeking children (UASC). The draft policy documents in question were being prepared in order to bring the guidance it currently relied upon together.
28. The Authority submitted that the document was currently only available in draft form as the process of obtaining legal and expert advice ahead of seeking stakeholder's views was ongoing. The Authority cited concerns about the misrepresentation of its approach if the early draft version were to be made public.
29. The Authority acknowledged that the nature of the policy was a "sensitive and topical one" and sought to manage a vulnerable group of people, whose views were being sought in the process of creation (ideally without public influence).
30. The Authority advised that disclosure would prevent future discussions, lessening the likelihood of expert opinions being expressed honestly and thus lessening the veracity of the procedure/policy produced.
31. The Authority submitted that there was an assumption of confidentiality involved in the collation of expertise and that staff would be disinclined to engage in it if that assumption were lost.
32. The Authority did, however, explain that once the document had been finalised it would be content to share a copy of this with the Applicant, as well as placing it into the public domain.

### *The Applicant's submissions*

33. The Applicant stated the Authority failed to consider the content and context of the documents being requested.
34. The Applicant explained that the Authority, at both stages of the process, failed to provide reasons why the future deliberation and decision making would be significantly inhibited in the event of disclosure. They observed that the [Commissioner's guidance](#)<sup>1</sup> provides relevant factors that could be taken into account when justifying the use of the exemption, but noted that none of these factors were referred to in the Authority's response.
35. The Applicant argued that the context of the creation of the documents was relevant here, in light of the Authority's statutory duties as "corporate parents" and its decision making in real time. The Applicant noted that the Authority failed to provide anything in response to the first three questions, despite its assertion that decision making was occurring in real time.
36. The Applicant observed that the nature of FOISA legislation was, at the core, about transparency and that non-disclosure here was in direct conflict with the Authority's duties to publish information about their "corporate parent" responsibilities, citing [section 20 of the Children \(Scotland\) Act 1995](#)<sup>2</sup>.
37. The Applicant commented on the justification of the Authority that the exemption applied in this case due to the "chilling effect", where disclosure of the type of document under

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<sup>1</sup> <https://www.foi.scot/sites/default/files/2022-04/BriefingSection30PrejudicetotheEffectiveConductofPublicAffairs.pdf>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1995/36/section/20>

consideration here would discourage future discussion and exchange of views. The Applicant expressed concern that the Authority failed to recognise that this is not a class-based exemption and failed to consider the context and content of the information when providing reasoning to support its application of section 30(b)(ii).

#### *The Commissioner's view*

38. The Commissioner has considered all of the submissions made to him by both the Authority and the Applicant, as well as the content of the withheld information under consideration.
39. As the Commissioner noted previously, in order for this exemption to be engaged, disclosure of the withheld information would, or would have to 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.
40. The Commissioner notes the Authority's claim that disclosure would inhibit the free and frank exchange of views, particularly while discussions regarding the content of the information remain ongoing.
41. Having considered the content of the withheld information itself, the Commissioner cannot agree that disclosure of certain parts of the information would adversely impact ongoing discussions.
42. The Commissioner understands that the information recorded in the documents identified by the Authority was in draft form at the time the Applicant submitted their request. Whilst the Commissioner acknowledges that the content of document 1 is incomplete, he is not satisfied that the nature of the information contained in that document is of such sensitivity that if disclosed would be likely to have a substantially inhibiting effect on future exchanges of views or deliberations.
43. Given the factual nature of the content of the information in document 2, the Commissioner cannot accept that disclosure of most of the information, would significantly inhibit future free and frank discussions. There are parts of this document that the Commissioner agrees are of a questioning and discursive nature, or reflect matters on which discussion is ongoing, and he accepts that if this information were to be disclosed this might lead to the harm envisaged by the Authority.
44. Having considered the content of the information in document 3, the Commissioner accepts that this demonstrates a deliberation across multiple staff members and that the nature of the discussion requires a level of privacy to allow experts to inform the process to the best of their ability, especially in light of updated national guidance on age assessment practices released in [July 2025](#)<sup>3</sup>.
45. The Commissioner recognises the requirement placed on local authorities for accommodating UASC, set out in section 25(1) of the [Children \(Scotland\) Act 1995](#)<sup>4</sup>. This ensures that all children have the same right to be accommodated and also, where there is a requirement for an age assessment to be conducted, that relevant guidance is followed. The creation of procedures relating to the Authority's statutory obligations in this regard is

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<sup>3</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2025/07/age-assessment-practice-guidance-scotland/documents/age-assessment-practice-guidance-scotland/age-assessment-practice-guidance-scotland/govscot%3Adocument/age-assessment-practice-guidance-scotland.pdf>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1995/36/section/25>

important and practitioners involved will be aware of the child protection implications at hand. The information in document 3 is the only one of the three where there is a clear ongoing discussion and the Commissioner agrees disclosure has the potential to inhibit future discussions substantially.

46. The Commissioner understands that the information in its draft form is sensitive because it is still in the process of creation. Whilst this exemption is not class-based, the guidance concedes that the timing of disclosure can be substantially inhibiting where decisions remain outstanding and advice is still under consideration. The complexity of this process, given the cross-over with other legislation, warrants some caution from practitioners involved in the development of internal procedures. As such, the Commissioner agrees that some of the information which remains under scrutiny would be exempt in line with section 30(b)(ii). The Commissioner notes, however, the Authority was content to release the documents once finalised.
47. The Commissioner accepts, therefore, that disclosure of some of the withheld information would, or would be likely to, result in substantial inhibition to the free and frank exchange of views for the purposes of deliberation, as argued by the Authority. This is the case in relation to all of the information in document 3 and parts of the information in document 2. As such, he is satisfied that this information is exempt from disclosure in terms of section 30(b)(ii) of FOISA.
48. However, the Commissioner is not persuaded, from the submissions he has received, or from considering the content of the withheld information itself, that disclosure of all of the information in document 1 and most of the information in document 2 would result in the harm claimed by the Authority.
49. Consequently, the Commissioner cannot agree that all of the withheld information is exempt from disclosure in terms of section 30(b)(ii) of FOISA. Given this conclusion, he is not required to go on to consider the public interest test in section 2(1)(b) in relation to all of the information withheld in document 1 and most of the information withheld in document 2. He therefore requires the Authority to disclose this information to the Applicant.
50. As the Commissioner is satisfied that the Authority was entitled to apply the exemption in section 30(b)(ii) of FOISA to withhold all of the information in document 3 and some of the information in document 2, he is required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA in relation to this information.

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

51. The exemption in section 30(b)(ii) is subject to the public interest test in section 2(1)(b). Where this exemption is correctly applied, the Commissioner must consider whether, in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

### ***The authority's submissions about the public interest***

52. The Authority acknowledged that there was an inherent public interest in placing the requested information into the public domain, as it would demonstrate a willingness on its part to be open and transparent in matters of public life.
53. Against this, the Authority argued that the public would find a greater value in it maintaining a space in which its officers could deliberate freely, to ensure that important procedures

concerning the accommodation of vulnerable children were formulated without fear that early deliberations might, if published in an incomplete fashion, lead to misrepresentation.

54. On balance, the Authority concluded that whilst it could acknowledge some public interest in disclosing the information, it considered this interest to be outweighed by the value in withholding the information in its current draft form.

*The Applicant's submissions about the public interest*

55. The Applicant asserted that the Authority failed to complete a thorough public interest test, noting that there was no weighing up for the public interest.
56. The Applicant observed that the Authority has statutory obligations to ensure that UASC are managed in line with other child protection legislation and considered the information requested would evidence its adherence to these.
57. The Applicant commented that service users have a right to full transparency around decision making about their lives and the decision of the authority not to disclose any information in this regard undermines their entitlement, without the provision of good reason as to why the public interest outweighs these children's rights and the Authority's duties as corporate parents.

*The Commissioner's view on the public interest*

58. The Commissioner has considered all of the arguments presented to him in relation to the public interest test.
59. The Commissioner recognises the significant public interest that exists in relation to decision making around the service provision, assessment of need and accommodation of unaccompanied asylum-seeking children. The Commissioner also recognises the importance and real-world implications of ensuring the rights of the child and the protection of vulnerable individuals.
60. That said, the Commissioner also recognises the significant public interest that exists in enabling the Authority and other relevant stakeholders to be able to discuss matters freely and frankly, without concern that exploratory discussions or preliminary views will be routinely disclosed into the public domain. He accepts that it is in the public interest that relevant stakeholders are not inhibited from giving their free and frank views in future, to ensure that appropriate policies, procedures and guidance are fully informed and accurately reflect the responsibilities and duties of the bodies concerned.
61. For that reason, the Commissioner considers there to be a greater public interest in maintaining the exemption in relation to all of the information in document 3 and some of the information in document 2.
62. However, the Commissioner considers that the information he has found to be capable of being disclosed in documents 1 and 2 (and not exempt in line with section 30(b)(ii)) would go some way to fulfilling the public interest in understanding the process being followed by the Authority and the matters being taken into consideration in determining what its responsibilities are and how it will make decisions.
63. In all the circumstances, the Commissioner finds that the public interest in disclosing all of the withheld information in document 3 and some of the withheld information in document 2 is outweighed by that in maintaining the exemption in section 30(b)(ii) of FOISA.

Consequently, he is satisfied that the Authority has correctly withheld some information in document 2 and all of the information in document 3.

## **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 sections 30(b)(ii), the Authority complied with Part 1.

However, the Commissioner finds that the Authority failed to comply with Part 1 (in particular, section 1(1)), by failing to identify all the information falling within scope of the request and incorrectly withholding information under section 30(b)(ii).

The Commissioner therefore requires the Authority to:

- disclose all of the information in document 1 and some of the information in document 2 (which he will identify in a marked-up copy of the information which will accompany this Decision Notice)
- to carry out further searches to determine if any other recorded information is held which would fulfil parts I, II and III of the Applicant's request (and retain evidence of these searches) and issue a fresh review outcome either disclosing any further information held and falling within scope or applying an exemption (where appropriate).

This should be done, by **5 April 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.

**Euan McCulloch**  
**Head of Enforcement**

**19 February 2026**