



Scottish Information
Commissioner
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Decision Notice 027/2026

Information about a specific post

Applicant: The Applicant
Authority: Tayside Health Board
Case Ref: 202500313

Summary

The Applicant asked the Authority for all information relating to a specific post, including emails between any members of staff within the Authority and any person outside the Authority. The Authority provided some information but withheld other information on the basis that it was otherwise accessible to the Applicant. The Commissioner investigated and found that the information in question was otherwise accessible to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 7 November 2024, the Applicant made a request for information to the Authority. He asked for all information and documentation, including emails between any members of staff within the Authority and any person outside the Authority, relating to a specific post within the Authority.
2. The Authority responded on 5 December 2024. It disclosed information to the Applicant but withheld some information under the exemption in section 38(1)(b) (third-party personal data) of FOISA on the basis that disclosure would allow the identification of individuals, which would be in breach of confidentiality and data protection principles.

3. Later that day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied because “some clearly important documents” had not been provided. He gave the following two examples and requested they be provided to him:
 - Document G, an email which had been disclosed to him, referred to a document entitled “Email putting back to panel.pdf” (Document 7), but Document 7 had not been disclosed.
 - A joint response to the Agenda for Change panel had not been disclosed.
4. The Authority notified the Applicant of the outcome of its review on 20 December 2024. It informed the Applicant that it held Document 7 and said that it assumed the joint statement he referred to was contained within Document 7. It withheld Document 7 under the exemption in section 38(1)(b) of FOISA and said that, as the Applicant was already in possession of Document 7 (being copied into the email chain), it was also exempt under section 25(1) of FOISA.
5. To advise and assist the Applicant, the Authority suggested that if the employee to whom the information in Document 7 related required a copy of Document 7, then it may be able to disclose it under the Data Protection Act 2018 (DPA 2018), via a subject access request.
6. On 27 February 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:
 - In some of the documents that had been disclosed to him, names had been proactively redacted. He suggested that the same could have been done for the specific documents he had referred to in his requirement for review.
 - In one of the documents that had been disclosed to him, the indicative banding outcome had been redacted. He submitted that there was no reason why this information should have been redacted.

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 5 March 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, and 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 its handling of the Applicant’s request.
10. During the investigation, the Applicant raised further concerns with the Authority’s handling of his request. However, the Commissioner’s decision notice is limited to considering the matters of dissatisfaction raised in the Applicant’s requirement for review. In other words, his decision notice is limited to considering whether the Authority was entitled to withhold Document 7 in response to the Applicant’s request.

Commissioner's analysis and findings

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

Section 25(1) – Information otherwise accessible

12. Information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA. Section 25(1) is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.

The Authority's submissions

13. The Authority confirmed that Document 7 corresponded to the attachment entitled "Email putting back to panel.pdf", which the Applicant had referred to in his requirement for review. It also confirmed that the joint response to the Agenda for Change panel was contained within Document 7.
14. Given that the Applicant had authored and received the emails within the email chain comprising Document 7, the Authority considered that the Applicant already possessed this information. It therefore considered it to be exempt from disclosure under section 25(1) of FOISA.
15. During the investigation, the Authority acknowledged that it should have applied the exemption in section 38(1)(a) – rather than section 38(1)(b) – as the information contained within Document 7 constituted the Applicant's own personal data. It therefore considered that two exemptions applied to Document 7: sections 25(1) and 38(1)(a) of FOISA.
16. As the withheld information comprised the Applicant's own personal data, the Authority said that it would not be appropriate to disclose this information under FOISA. It noted that, as part of its duty to provide advice and assistance, it had advised the Applicant that this information could be obtained (with appropriate redactions to third-party names) by submitting a subject access request under the DPA 2018.
17. While it noted that it had originally cited the exemption in section 38(1)(b) of FOISA in error, it noted that the exemptions in section 38(1)(a) and (b) served the same purpose – to protect personal information. Given that disclosure under FOISA constitutes disclosure to the public at large, it submitted that disclosure of Document 7 under FOISA would not be appropriate.

The Applicant's submissions

18. The Applicant noted that in some of the documents that had been disclosed to him, names had been proactively redacted. He suggested that the same could have been done for the specific documents (both contained in Document 7) he had referred to in his requirement for review.
19. During the investigation, the Applicant was asked to confirm whether he had Document 7 in his possession (as had been suggested by the Authority and as would appear to be the case, as he either authorised or received each email in the email chain comprising Document 7). He did not respond.

The Commissioner's view

20. The Commissioner has considered the submissions from both the Applicant and the Authority, together with the withheld information in Document 7.
21. Section 25(1) of FOISA is one of the few sections of FOISA that is not "applicant blind". Whether the exemption in this section applies depends on the ability of the individual requester to be able to obtain the information other than under section 1(1) of FOISA.
22. As stated above, the Applicant was asked to confirm whether he still had Document 7 in his possession, but he did not respond.
23. Taking account of this and given that the information in Document 7 comprises an email chain in which the Applicant authored or received each email, the Commissioner is satisfied, on balance, that the information in Document 7 is information that the Applicant would be able to obtain other than under section 1(1) of FOISA.
24. The Authority correctly notes that it advised the Applicant that that a subject access request could be made under the DPA 2018 for his own personal data. At the same time, however, it said that this information was exempt under the exemption in section 38(1)(b) of FOISA (i.e. third-party personal data). The Commissioner considers this aspect of the Authority's review outcome to be unclear, given subject access requests provide the right of access to requesters' own personal data – not the personal data of third parties.
25. While the Commissioner finds that the information is accessible to the Applicant in any case, the Commissioner accepts that much of the information within Document 7 comprises the Applicant's own personal data. To the extent that it is not his own personal data, it is the personal data of third parties. Third party data had been redacted from the other information disclosed to the Applicant, which he did not challenge – in fact, he suggested that similar such redactions could be made to Document 7.
26. In all of the circumstances, therefore, the Commissioner finds, on balance, that the Authority was entitled to rely on the exemption in section 25(1) of FOISA to withhold the information in Document 7. This is because this information would appear to already be in the Applicant's possession. (It also seems possible that the Applicant could obtain this information outwith FOISA, through his existing relationship with the Authority.)
27. As the Commissioner accepts that the Authority was entitled to rely on the exemption in section 25(1) of FOISA to withhold the information in Document 7, he will not go on to separately consider the application of the exemption in section 38(1)(a) to withhold the same information.

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.

Euan McCulloch
Head of Enforcement

23 February 2026