



Scottish Information  
Commissioner  
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# Decision Notice 055/2026

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## Care providers subject to local moratoriums

Applicant: The Applicant  
Authority: South Ayrshire Council  
Case Ref: 202501432

### Summary

The Applicant asked the Authority for information related to reported local moratoriums imposed on four care providers in 2021-2022. The Authority disclosed some information but withheld other information on the basis that disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs. The Commissioner investigated and found that the Authority had wrongly withheld the information. He required the Authority to disclose the information to the Applicant.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 30(c) (Prejudice to effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 13 June 2025, the Applicant made a request for information to the Authority. He noted that the Authority's Chief Social Work Officer's (CSWO) [Annual Report 2021 – 2022](#)<sup>1</sup> referred to local moratoriums imposed on four care providers which concluded in each case that

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<sup>1</sup> [https://www.south-ayrshire.gov.uk/media/7512/170123-Cabinet-Agenda-Item-8a-Chief-Social-Work-Officer-Annual-Report/pdf/Combined\\_Item\\_8a\\_-\\_REP\\_20230117\\_C\\_CSWO\\_Annual\\_Report.docx\\_163z5lxxn0jy5.pdf?m=1673353227993](https://www.south-ayrshire.gov.uk/media/7512/170123-Cabinet-Agenda-Item-8a-Chief-Social-Work-Officer-Annual-Report/pdf/Combined_Item_8a_-_REP_20230117_C_CSWO_Annual_Report.docx_163z5lxxn0jy5.pdf?m=1673353227993)

"people using those services continued to experience a high standard of care". Among other things, the Applicant asked:

- Which two care-at-home providers do these moratoriums relate to? (part 7)
  - Which two care homes do these moratoriums relate to? (part 8)
  - To which care home does the... LSI [Large-scale investigation] relate? (part 10)
2. The Authority responded on 11 July 2025. It withheld the information requested in parts 7, 8 and 10 of the request under the exemption in section 33(1)(b) of FOISA.
  3. On 14 July 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the Authority's decision to withhold the information requested in parts 7, 8 and 10 of his request because he disagreed that the exemption in section 33(1)(b) of FOISA applied.
  4. The Authority notified the Applicant of the outcome of its review on 11 August 2025. It withdrew its previous reliance on the exemption in section 33(1)(b) of FOISA and instead withheld the information requested in parts 7, 8 and 10 of the Applicant's request under the exemption in section 30(c).
  5. On 22 August 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 the exemption in section 30(c) of FOISA applied to the information requested in parts 7, 8 and 10 of his request.

## 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 16 September 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 related to its justification for applying the exemption in section 30(c) of FOISA.
9. During the investigation, the Authority disclosed to the Applicant the information it had withheld in response to part 10 of his request, on the basis that it no longer considered the exemption in section 30(c) of FOISA applied to this information. However, it confirmed that it wished to continue to rely on the exemption of section 30(c) of FOISA in relation to parts 7 and 8 of the Applicant's request.
10. In response to this disclosure, the Applicant confirmed that he still wished the Commissioner's decision notice to consider the information withheld from him at review stage under the exemption in section 30(c) of FOISA (i.e. including part 10 of his request, notwithstanding that the Authority had now disclosed this information to him).

## **Commissioner's analysis and findings**

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

### ***Information disclosed during the investigation***

12. During the investigation, the Authority disclosed to the Applicant the information in part 10 of his request that it had previously withheld under the exemption in section 30(c) of FOISA.
13. The Authority explained that it had further considered the scope of the LSI. Having done so, it noted the information it had withheld would be reported and made publicly available following the LSI. It recognised that such information could therefore not be considered exempt from disclosure under the exemption in section 30(c) of FOISA and that it should have disclosed it to the Applicant during the review process.
14. In the circumstances, the Commissioner must find that the information in part 10 of the Applicant's request was not exempt from disclosure under section 30(c) of FOISA and that the Authority's failure to disclose it by the review outcome (at the latest) was a breach of Part 1 of FOISA (particularly, section 1(1)).

### ***Section 30(c) - Prejudice to effective conduct of public affairs***

15. 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.
16. The use of 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 citing 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.
17. The standard to be met in applying the tests contained in section 30(c) of FOISA is high: the prejudice in question must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case-by-case basis, taking into consideration the content of the information and all other relevant circumstances (which may include the timing of the request).

### ***The Applicant's submissions***

18. The Applicant believed that the Authority had conflated the exemptions in section 30(c) and 30(b) of FOISA and used arguments in support of section 30(c) which applied only to section 30(b), despite the exemptions being mutually exclusive.
19. Whatever the legitimacy of the Authority's response, he submitted that the Authority had provided no evidence or argument to support its assertion that disclosure of the identity of the care providers in question would deter members of the public from providing information or render the Authority unable to function.
20. Instead, the Applicant argued that disclosure would alert the wider public to the need to report concerns and would "incentivise rather than deter frank and open exchanges and lead to greater respect for the rights of service users and the public interest in general."

21. The Applicant said that the Authority's review failed to recognise that the Authority's investigation of safeguarding concerns in 2021/22 meant that the information requested was effectively already in the public domain "at least selectively". He said this was because it would have been required to be disclosed by the Authority to service users, their family members, staff working for these care providers and other stakeholders – none of whom, he presumed, were "sworn to secrecy".

#### *The Authority's submissions*

22. The Authority provided detailed submissions to the Commissioner. He has fully considered these submissions, but has only summarised what he considers to be the key elements in his decision notice.
23. By way of background, the Authority provided the Commissioner with a detailed explanation of its statutory responsibilities in relation to all residents in care homes (including those whose care package is not funded by the Authority). It also detailed the collaboration it undertakes with care providers, the Care Inspectorate and other public and scrutiny bodies, to ensure it upholds its statutory responsibilities and that care providers who provide residential care support to individuals meet the required standards.
24. The Authority explained that in some cases it may be necessary to apply a "responsive intervention" to address concerns around the quality-of-service delivery by care providers. Such early intervention allows agencies to be supported, and this can result in care home suppliers seeking a voluntary moratorium or the Authority's Health & Social Care Partnership (HSCP) enforcing moratorium actions. These actions can result in the temporary cease or reduced referrals while commissioned services can focus on making service delivery improvements. It noted that the HSCP's [Standard Operating Procedure for Moratoriums](#)<sup>2</sup>, which provides an overview of the moratorium process, is available on its website.
25. The Authority submitted that the disclosure of the withheld information (i.e. the names of the four care providers subject to local moratoriums imposed in 2021-22) would be likely to substantially prejudice the effective conduct of public affairs, causing significant harm to the statutory responsibilities the Authority has under the Social Work (Scotland) Act 1968, the Local Government in Scotland Act 2003 and Health and Social Care Standards.
26. The Authority said that the effective administration of these statutory responsibilities relies heavily on care homes, providers, residents, its own staff and external statutory bodies being able to work in a collaborative way, to gather information and investigate and consider measures that may be necessary to improve standards of care.
27. The Authority explained that the Quality Assurance inspections undertaken by the HSCP allow an opportunity for it to review the quality of service provision, speak with staff and service users and ensure that residential care services are undertaken to a consistently high standard. This process, which relies heavily upon collaboration, and open and frank discussion between the care provider and the Authority, allows the identification of where services are not meeting these standards and allows the early implementation of improvements and changes.
28. Without this collaboration and open discussion, the Authority submitted that improvements to service provision would be likely to be substantially prejudiced, as such open and frank

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<sup>2</sup> <https://hscp.south-ayrshire.gov.uk/media/15686/SAHSCP-Standard-Operating-Procedure-for-Moratoriums/pdf/1012465935SAHSCP-Standard-Operating-Procedure-for-Moratoriums.pdf?m=1753456842030>

discussion may fail to take place, should care home and care providers have their names and details published within the public domain, under FOISA, at a time when weaknesses are being identified and active engagement is taking place to support service delivery.

29. The Authority argued that it must be able to inspect fully and receive all the relevant facts and information from a care provider while undertaking quality assurance visits. This process allows the inspection to be fully informed, and a fair decision reached on whether further actions are necessary to ensure residential care meets the required standards.
30. The Authority said that care providers would be inhibited from speaking in an open, frank and transparent manner if early intervention actions, such as temporary moratorium actions for the placement of residents into a facility, were to become public knowledge. It explained that such actions are undertaken in a collaborative way, to support the continued quality of care to residents in residential care and to reduce the risk of care home closure, which would potentially leave residents with no residential care facility within the area to be placed.
31. Furthermore, the Authority suggested that disclosure of the withheld information into the public domain would, without clear facts and context, allow conclusions to be drawn that were likely to be factually inaccurate regarding the provision of the care service from the homes and providers. It argued that this would result in a detrimental impact not only on the reputation of the home and providers, but also on the Authority's ability to support and fulfil the statutory obligations, which would cause distrust in the public and unfounded worry to the families and residents who relied on this support.
32. The Authority said that the moratorium process required a balanced relationship of trust and confidence, between the members of staff within the HSCP undertaking the moratorium and the care home and/or care provider and their staff, to allow open and frank discussion around where service improvements are required and to avoid more serious actions or investigations (e.g. through the Care Inspectorate).
33. The Authority explained that there is often a "high level of sensitivity" around the process as the care provider feels exposed and at risk from public reaction from misunderstanding, not having access to the relevant facts and a general lack of understanding of the legislative framework that these protections are governed by. It said that the relationship that has been formed with all providers, but particularly those who require support, is critical to the effectiveness of this process and there is "an expectation that as far as possible this relationship is undertaken in confidence".

#### *The Commissioner's view on the exemption*

34. The Commissioner has considered carefully all the submissions made by the Applicant and the Authority, together with the withheld information.
35. The Commissioner's [guidance](#)<sup>3</sup> on the exemption in section 30(c) of FOISA sets out factors which may be relevant to consider when applying the exemption, including the sensitivity of the information and the passage of time. The risk of substantial prejudice generally diminishes as time passes and the Commissioner must, at the latest, consider the position when the Authority carried out the review (August 2025, in this case).
36. The Commissioner would emphasise that he can only consider the information actually sought by the Applicant, and whether disclosure of this information would be the catalyst to

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<sup>3</sup> <https://www.foi.scot/sites/default/files/2022-04/BriefingSection30PrejudicetotheEffectiveConductofPublicAffairs.pdf>

cause the harm claimed. The question to answer is how disclosure of the information being withheld in this case (i.e. the names of the four care providers subject to local moratoriums imposed in 2021-22) would lead to the substantial prejudice required for this exemption to be engaged.

37. Clearly, the withheld information relates to circumstances of several years ago rather than to current or “live” circumstances. Notwithstanding the passage of time, the Commissioner acknowledges that the fact a moratorium was imposed at any past time on a named care provider may nevertheless be considered a matter of some sensitivity. That said, the passage of time in this case is significant.
38. In light of this, the Commissioner does not consider that disclosure of the names of the care providers in 2021-2022 would, of itself, reveal anything about the standard of care provided by these care providers today. From one perspective, the fact a moratorium was imposed on a care provider could be seen as evidence that that the standard of care from that provider had since improved following them implementing the steps required by the moratorium. From another, the moratoriums were imposed so long ago that they provide no indication of the standard of care provided by the same care provider today.
39. The Commissioner has considered the Authority’s suggestion that disclosure of the names of the four care providers, without clear facts and context, would allow conclusions – likely to be factually inaccurate – regarding the provision of the care service from the homes and providers, resulting in a detrimental impact not only on the reputation of the home and providers, but also on the Authority’s ability to support and fulfil its statutory obligations to individuals in residential care.
40. The Commissioner would note that to the extent that public authorities have concerns that disclosure of information might be misinterpreted, they may choose to provide a commentary which places the information in context or explains its limitations. However, in this case, the actual withheld information in question is simply the names of the four care providers subject to local moratoriums imposed in 2021-2022.
41. Ultimately, the Commissioner does not accept that the Authority’s concerns in this regard are sufficient to engage the exemption in section 30(c) of FOISA. As noted earlier, the moratoriums in question were imposed several years ago and there is information already in the public domain setting out in detail what moratoriums involve, how decisions are made and implemented and how they relate to LSIs.
42. Whilst there is clear value in the collaborative relationship described by the Authority and ensuring effectiveness of such a relationship, the Commissioner does not accept that disclosure of the withheld information in this case would have the effect on that relationship claimed by the Authority. There exists a clear regulatory framework with legal powers available to the Authority, to enable it to effectively fulfil its statutory duties to all residents in care homes and to ensure the required standard of residential care support is provided.
43. Given this regulatory framework and the strong expectation that care providers will cooperate with local authorities, the Commissioner also does not consider it likely that care providers would, were the withheld information disclosed, be inhibited from engaging with the Authority to the extent that it would have a substantially prejudicial impact on the Authority’s ability to effectively fulfil its statutory duties to all residents in care homes.
44. While the Authority referred to an “expectation” that, as far as possible, the relationship – in the context of moratorium action – between the care provider concerned and the Authority

would be undertaken “in confidence”, it did not provide the Commissioner with any evidence or legal authority demonstrating this (e.g. legislation, case law or any documentation relating to a legal relationship with the respective providers).

45. Taking account of the submissions received from the Authority in relation to the actual information being withheld in this case, the Commissioner does not believe he has any option but to find that the Authority has not evidenced the required substantial prejudice for section 30(c) of FOISA to be engaged.
46. The Commissioner cannot accept the Authority’s claim that disclosure of the withheld information would lead to the “the risk of care home closure, potentially leaving residents with no residential care facility within the area to be placed”. He regards this claim as being speculative and un evidenced, and he is not satisfied that the other harms claimed by the Authority would, or would be likely, to result in the harm required for the exemption in section 30(c) of FOISA to be engaged (if, in reality, they arose at all).
47. Having considered all the circumstances, including particularly the passage of time, the Commissioner therefore finds that the Authority was not entitled to apply section 30(c) of FOISA to withhold this information.
48. As the Commissioner is not satisfied that the exemption in section 30(c) of FOISA is applicable to the information, he is not required to go on to consider the application of the public interest test in section 2(1)(b).
49. The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant.
50. However, the Commissioner would like to stress that it is important for Scottish public authorities to treat each request for information on a case-by-case basis. Disclosure of information in one case should not be taken to imply that communications of a particular type will be routinely released in future. The circumstances of each case, including the content of the specific information under consideration, must be taken into consideration and (where required) the public interest in each case assessed on its own merits.

## **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 the Authority wrongly withheld under the exemption in section 30(c) the information requested in parts 7, 8 and 10 of the Applicant’s request. In doing so, the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to disclose the information as requested by the Applicant in parts 7 and 8 of his request, by 7 May 2026.

Given that the Authority has already disclosed the information as requested by the Applicant in part 10 of his request, the Commissioner does not require the Authority to take any action in response to 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.

## **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**

**23 March 2026**