Scottish Information Commissioner
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Decision Notice 118/2026

Meeting relating to the 35-hour week

Authority: Aberdeen City Council
Case Ref: 202500894

Summary

The Applicant asked the Authority for information relating to a meeting about the 35-hour week. The Authority withheld some of the information requested on the grounds that disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs, and notified the Applicant that some information was not held or was already publicly available.

The Commissioner investigated and found that, by the end of his investigation, the Authority had identified all relevant information and that it had been correctly 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); 10(1) (Time for compliance); 17(1) (Information not held); 30(c) (Prejudice to effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 7 April 2025, the Applicant made a request for information to the Authority. She asked for, in relation to a particular meeting of the Authority about proposals for a 35-hour week:

   (i) Agendas, Notes, orders, Minutes, Decisions, transcripts, short hands, delegations, legal advice notes, issued by [the Authority] or to [the Authority] at, in contemplation of, and following the conclusion of the meeting.

(ii) All Audio and video recordings of the meeting, made by [the Authority], any officer of [the Authority], any councillor.

(iii) All notes, transcripts and short hands made at the meeting, in contemplation of the meeting, at the conclusion of the meeting or subsequent to the meeting which relate to the meeting, or subsequent actions to be taken, by any officer or councillor in attendance at the meeting.

She specified that officers in attendance would include the Chief Executive, Interim Chief Officer Governance, Executive Director - Corporate Services, Chief Officer - People and Citizens and Legal Team Leader - Litigation. The Applicant also named two particular individuals.

2. The Authority responded on 8 May 2025. It notified the Applicant, under section 17 of FOISA, that it did not hold any information falling within the scope of request (iii). In relation to request (ii) the Authority stated that some of the information was not held (section 17 of FOISA) and some information could be accessed online (section 25(1) of FOISA), and it provided the Applicant with a weblink to this information. In response to request (i) the Authority applied section 17 and section 25(1) of FOISA to some of the information but also notified the Applicant that it was withholding a briefing note under section 30(c) of FOISA.

3. On 8 May 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant expressed dissatisfaction with the Authority's decision to withhold the briefing note, arguing that it was of significant public interest and should be disclosed. The Applicant also questioned whether the Authority had identified all relevant information, suggesting that its legal officers would have made notes in advance of the meeting taking place. She believed it was unlikely that no officer or councillor in attendance made notes in contemplation of, during or at the conclusion of the meeting.

4. The Authority notified the Applicant of the outcome of its review on 6 June 2025. It maintained its position in relation to requests (i) and (ii). In relation to request (iii) the Authority upheld its reliance on section 17 of FOISA in relation to named officers and elected members. However, it informed the Applicant that it did hold notes made by an officer who attended the meeting, and it withheld these notes under section 30(c) of FOISA.

5. On 6 June 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority's review because:

(i) she did not believe an exemption applied;

(ii) she believed it would be in the public interest for the information to be disclosed;

(iii) she believed further information was held falling within scope of the request;

(iv) the Authority's review panel (which had considered her request for review) had not had sight of all the information in question; and

(v) the Authority had not responded to the initial request within the statutory timeframe.

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 3 July 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 related to searches carried out and the reasons for withholding information under section 30(c) of FOISA, as well as questions arising from the withheld information.

Commissioner's analysis and findings

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

Information held by the Authority

10. 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, 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.

11. 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 an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

12. 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. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information.

13. 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) actually held by the public authority.

Information identified during the investigation

14. During the investigation, the Authority provided the Commissioner with further information (which was not presented at the meeting but which was prepared by an official before the meeting took place). The Authority stated that it believed the document fell outwith the scope of the request because it was not "issued by [the Authority] or to [the Authority]".

15. It stated that, should the Commissioner consider the information fell within scope of the investigation it would apply section 30(c) to the whole document and section 36(1) (Confidentiality) of FOISA to some of the document.

16. The Commissioner has carefully considered this document provided to him during the investigation. He must take care not to disclose details of this information in this Decision but, in his view, the document was captured by request (iii) because it was made by a specified official "in contemplation of" the meeting.

17. Given the Commissioner's view that this information falls within the scope of the request, and that it had not previously been provided to the Applicant or withheld under an exemption, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA.

18. During the investigation, the Authority was also asked about a reference within the withheld information to further information which was apparently withheld but which had not been provided to the Commissioner.

19. The Authority stated that at the time of processing the request and at review stage, it considered that there were two briefing notes, one which was provided (to elected members) prior to the meeting and one provided afterwards, both of which fell within the scope of the request and which required to be considered.

20. The Authority stated that when submitting the withheld information to the Commissioner's office, it unfortunately only provided one briefing note and it apologised for the oversight. It noted that it had referenced the second briefing note in its request response. The Authority explained that it considered the second briefing note exempt from disclosure as per the same exemption criteria as applied in the original response.

21. The Commissioner has carefully considered the Authority's submissions on this point, alongside the wording of the Authority's response of 8 May 2025 and its review outcome of 6 June 2025. He notes that the Authority in its initial response advised the Applicant that a specified officer had issued a confidential briefing note to all councillors before and following the meeting. The response continued:

    "It is not possible to release these because the briefing note contains sensitive information that is crucial for the internal decision-making processes of the [Authority]."

22. The Commissioner acknowledges that the response refers to a confidential briefing note issued "before and following" the meeting and that the Authority also referred to "these" (indicating more than one). However, he notes that, elsewhere in the response, the Authority also makes three separate references to "the" briefing note (singular).

23. Furthermore, in the Authority's review outcome, in relation to request (i), it twice referred to "the" briefing note, singular. It appears to have made no reference to a second briefing note anywhere in the review outcome.

24. Given the above, the Commissioner does not consider that the wording of the review outcome evidences the Authority's position that at the time of the review, it considered there were two briefing notes. Consequently, the Commissioner is not satisfied that the Authority considered both briefing notes in its review outcome, and he is therefore not satisfied that the Authority properly withheld the second briefing note under an exemption in the review outcome.

25. For this reason, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.

26. During the investigation, the Authority also confirmed that it was applying section 30(b)(i) and (ii) (Prejudice to effective conduct of public affairs) of FOISA to all of the withheld information.

The Applicant's comments on whether further information was held

27. The Applicant argued that it was unlikely that no officers or councillor at the meeting made notes in contemplation of, during, or at the conclusion of the meeting and that all such notes would be information held by the Authority.

The Authority's comments on whether further information was held

28. The Authority submitted that it contacted all of the officers specified in request (iii) – along with the Convener (i.e. the chair) of the meeting (who on this occasion was the Depute Provost), the People Services Manager and the Legal Services Team Leader (who also attended the meeting) - and asked if they held any records that would fall within the scope of the request. All of them confirmed that they held no further information.

29. The Authority explained that searches were focused on officers present at the meeting as employees of the council and it considered that councillors who were not acting within a required role (i.e. as chair) and, as such, were acting under their political role, were therefore not subject to Freedom of Information in relation to this request.

30. The Authority confirmed that it also contacted the committee clerk involved in the management of the relevant meeting, because they would likely be aware of any records held in relation to request (iii).

31. The Authority explained that relevant senior officers undertook searches based both on the subject matter of the request and the reasonable expectation of where pertinent information might be stored or recorded. It stated that it had asked relevant senior officers to undertake searches based on their own knowledge of what records they did or did not hold.

32. The Authority also stated that there was no expectation that officers would keep notes of meetings, beyond the notes/minutes taken by the committee clerk.

33. The Authority confirmed that the only information it held, that it considered fell within the scope of the request, comprised two briefing notes (one issued by the Chief Officer People and Citizen Services to elected members before the meeting and another issued after the meeting (request (i)) and the handwritten notes held by the committee clerk (request (iii)). The Authority had also identified a preparatory note (created by the Chief Officer People and Citizen Services) which it did not consider to be within scope, but which the Commissioner has already concluded was within the scope of request (iii) (as set out in paragraphs 14 to 17).

34. The Authority provided the Commissioner with evidence of the searches it had carried out, including the email requests for searches it had issued to the officers (as well as to the Lord Provost and Depute Lord Provost) and the responses it received to its request for searches.

35. In relation to request (ii), the Authority stated that no specific checks with individual officers and councillors were made in relation to recordings (of the private session of the meeting). It explained that it would be a breach of the Authority's Standing Orders and the Councillors' Code of Conduct were any councillors to make a recording of a meeting of the Authority without consent, particularly a meeting where the press and public were excluded.

36. Furthermore, the Authority noted that it would also be a disciplinary matter if any officer was to make a recording and it quoted its own Standing Order 39.1 as relevant to this matter. This standing order stated:

"Other than the live webcasting or recording of Council, Committee and Sub-Committee meetings by [the Authority], any video or sound recordings or broadcasting of meetings by any other means, or the taking of any photographs, will be at the Convener's discretion."

37. The Authority stated that no such approaches were made to the Convener of the meeting, (the Depute Provost on this occasion) and that there was no evidence of any councillor or officer recording the meeting on a mobile phone or other electronic device during the meeting. The Authority submitted that this kind of behaviour would be self-policed, i.e. it argued that other councillors or officers would notice and report it to the Depute Lord Provost or senior officers in attendance at the time.

The Commissioner's view on whether further information was held

38. The Commissioner has considered whether notes made by councillors who were not office bearers which related to the meeting would be subject to FOISA.

39. He considers that while any such notes made during the meeting would have related to council business, these notes would not have been made on behalf of the Authority but on behalf of the individual attendee (in either a personal or a political capacity). That is, they may have been made as an aid to memory in respect of points raised during discussions, or questions the individual wanted to ask, or they may have been points the individual wanted to make in response to matters raised during discussion or which had been raised with them by constituents.

40. Whatever the exact nature of any such note, the Commissioner considers that any such information would have been made and held on behalf of the individual themselves. It would have been for their own use, reflected their own concerns or priorities, and would not have been created for the purpose of the official record, whether public or private, of the meeting. The Commissioner's view is therefore that any note made by these councillors does not fall under the scope of FOISA.

41. Moreover, the Commissioner finds the Authority's comments on the rules governing audio and video recordings of the private part of the meeting to be persuasive. In the absence of evidence that any such recording was made by any party, he considers it reasonable to conclude that no such information is held.

42. Having considered the Applicant's and the Authority's submissions and the terms of the request, the Commissioner accepts that (by the close of the investigation) the Authority had taken adequate steps to identify and locate the information it held which fell within the scope of the Applicant's request. The Commissioner has viewed the evidence of the searches provided by the Authority, and he is satisfied that the searches were reasonable and proportionate and were capable of identifying all relevant information.

Section 30(c) – Prejudice to effective conduct of public affairs

43. The Authority has applied the exemption contained in section 30(c) of FOISA to all of the withheld information.

44. 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.

45. 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.

46. 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. The authority therefore 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.

47. 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 Authority’s comments on section 30(c)

48. The Authority stated that disclosure of the briefing notes, the preparatory sheet, and the handwritten notes of the committee clerk would otherwise significantly prejudice the effective conduct of public affairs.

49. It stated that it was difficult to see how a private session of an Authority meeting, as permitted under the Local Government (Scotland) Act 1973, could remain private if the handwritten notes of a committee clerk of such private sessions were to be made publicly available by making a freedom of information request. The Authority noted that Councillors had debated whether the issue before them should be held in private (see Minute at Agenda for Council on Wednesday, 2nd April, 2025, 1.00 pm[1]) and had reached the decision that the public and the press should be excluded from the meeting.

50. The Authority argued that senior staff should be able to provide a briefing in a private session of the Authority in the safe knowledge that the information will not be publicly disclosed. It commented that staff should also have the ability to prepare a crib sheet to gather their thoughts prior to any meetings to assist them in addressing any questions that may arise. The Authority stated that a crib sheet did not represent the final position of the Authority on any matter and was essentially a tool to assist the officer to respond to questions.

51. The Authority maintained that the ability to hold private meetings supported informed decision making whilst work is ongoing. It claimed that the importance of this was paramount when the briefings shared in confidence were in consideration of sensitive staffing matters.

52. The Authority stressed that it was paramount to maintain confidentiality in certain aspects of Council operations to ensure that all matters were handled with the due diligence and sensitivity they required. It argued that senior staff should be able to provide a briefing in a private meeting, safe in the knowledge that the information would not be publicly disclosed.

53. The Authority argued that this allowed for open and frank exchange to support informed decision-making whilst work was ongoing and that this was of paramount importance when the briefings shared in confidence were in consideration of sensitive staffing matters.

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[1] https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=122&MId=9819&Ver=4

54. The Authority argued that the withheld information fell within this category, and that its release could compromise the integrity of ongoing and future deliberations, consultations, and negotiations in relation to labour relations.

55. Additionally, the Authority argued that it had met its legal obligations by providing a publicly available note of the meeting, and it had provided the Applicant with a link to this. It argued that it was to the effective conduct of public affairs that clerks could take draft notes during a private meeting safe in the knowledge they would not be publicly available.

56. The Authority stated that draft notetaking during a meeting was a tool to help the clerk put together the publicly available minute. It argued that draft documentation was a work in progress and not the final documented position on a matter. The Authority further stated that releasing such notes would be counterproductive to the effective conduct of public affairs as these notes enabled accurate minutes to be drafted. It also noted that private sessions were not webcast, so clerks did not have the ability to review recorded meetings to help them in the creation of the minute.

57. The Authority argued that, in the circumstances, having a publicly available minute which summarised the proceedings balanced the need for the public to know what happened at a meeting with the recognition that there was specific information which the Authority needed to remain private at that particular juncture.

58. Furthermore, in relation to the document provided to the Commissioner during the investigation (the preparatory note), the Authority stated that it was necessary for officers to be allowed the space to create notes to aid presentation or to prepare for any questions posed to them at committee or Authority meetings without the expectation that these would be made publicly available.

59. The Authority argued that, if officers were not able to prepare appropriately for the decision-making process, or free to create written notes without fear of them being made publicly available, the impact on the Authority and elected members to make fully informed decisions would be detrimental to the democratic process, and to the functioning of the Authority. It stated that information may be forgotten or mis-communicated, if officers were expected to work without written notes to refer to.

The Applicant's comments on section 30(c)

60. The Applicant stated that the Authority had provided only generic assertions and that it had failed to provide specific evidence of how disclosing the withheld information would cause such harm.

61. For instance, the Applicant argued that the Authority did not explain what aspects of the briefing note were so sensitive that their release would substantially undermine ongoing or future Authority operations. The Applicant referenced the Commissioner's briefing on section 30[2], which emphasises that authorities must demonstrate a genuine link between disclosure and harm, which she argued the Authority had not established.

62. The Applicant argued that the meeting occurred on 2 April 2025 and that (at the time she made further comments to the Commissioner) several months had since passed. She argued that the consultations or deliberations referenced had since concluded, as had the entire organisational change process.

[2] https://www.foi.scot/sites/default/files/2022-04/BriefingSection30PrejudicetotheEffectiveConductofPublicAffairs.pdf

The Applicant again referenced the Commissioner's guidance which notes that once matters are resolved, it is harder to argue substantial prejudice unless disclosure affects future practices. She submitted that the Authority had not demonstrated any ongoing sensitivity or impact on future similar processes.

63. The Applicant argued that the briefing note related to organisational changes aimed at reducing operating costs, specifically a proposal to reduce the working week. She noted that the authority acknowledged publishing information about the changes on its intranet and sharing with stakeholders, and that this undermined claims of sensitivity. She referenced the Commissioner's Decision 241/2014[3], in which she claimed that a case review was found not to be exempt from disclosure due to lack of evidence of harm. She argued that the Authority had not shown how disclosure would impede implementing any decisions or recommendations.

The Commissioner's view on section 30(c)

64. The Commissioner has considered all the submissions from the Applicant and the Authority and accepts, in all the circumstances of this particular case, that section 30(c) of FOISA applies to the withheld information.

65. In his view, the subject matter of the meeting was sensitive and directly impacted Authority staff. While he would expect elements of the process to be public in terms of openness and transparency, he would also not expect all details of all discussions of this sort to take place in public. The Commissioner notes that, at the time the request was made (five days after the meeting which was the subject of the request) discussions involving the proposed reduction in staff working hours (with the associated impact on affected staff) were ongoing.

66. He also considers the Authority's submissions on the necessity of notetaking during a meeting, and the importance of adequate preparation by officials before meetings to be reasonable and relevant to its consideration of this information request.

67. While the Commissioner notes the Applicant's comments that the Authority had published information about the changes on its intranet and shared information with stakeholders, he does not consider that this necessarily negates the sensitivity of the withheld information.

68. Firstly, the Commissioner considers that the process which was underway necessitated the sharing of particular information with staff and unions.

69. Moreover, in the Commissioner's view, the fact that some information was released and some was not demonstrates that different information may relate to the same subject yet be sensitive to varying degrees.

70. The Commissioner considers that simply because the Authority decided limited information should be made available to those potentially impacted by the changes, it does not automatically follow that further information should be made more widely available (either when matters are still under discussion or later). Accepting this would mean accepting that if information was disclosed to a limited group of people or organisations with a direct interest in a particular matter, then further information should automatically be more widely disclosed.

71. The Commissioner considers that the Authority's comments on the purpose of and need for notes by officials (before or during a meeting) are reasonable and he is satisfied that it has detailed the potential consequences of disclosure.

[3] https://www.foi.scot/decision-2412014

He accepts that disclosure of these notes (in advance of, or following, a private meeting of the Authority) would dissuade officials from creating or sharing such information in future, for fear that sensitive information would be released too soon into the public domain, with the possibility of disrupting ongoing processes and discussions. If this occurred, the Commissioner considers that it would undermine the Authority's ability to hold private Council meetings, and as such it would, or would be likely to prejudice substantially, the effective conduct of public affairs.

72. Further to the Applicant's comments on the passage of time, the Commissioner would note that he must consider the situation at the time of the requirement for review and not at any time thereafter.

73. The Commissioner has also considered Decision 241/2014[4] referenced by the Applicant, which concerned withheld information relating to an internal Significant Case Review commissioned by that Authority after a murder. While the Commissioner considers every appeal on its own merits, he recognises that a reference to a previous decision may be useful in some circumstances. However, he does not consider that to be the case here.

74. In the Decision referenced by the Applicant, the Commissioner found that most of the withheld information had been correctly withheld by that Authority under section 30(c). In that case, while the Commissioner found that the recommendations of the review were required to be disclosed, he also concluded that the Authority had been correct to withhold most of the information. This does not seem to be particularly relevant to the matters under discussion in this case.

75. In light of the above, the Commissioner would urge applicants who reference previous decisions as part of their submissions to ensure they fully read those decisions in order to satisfy themselves that such decisions are relevant to the arguments they wish to advance.

76. In all the circumstances, the Commissioner is satisfied that the Authority was entitled to apply the exemption in section 30(c) of FOISA to all of the withheld information.

77. As mentioned above, the exemption in section 30(c) of FOISA is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

The public interest test - section 30(c)

78. 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 Authority's comments on the public interest

79. The Authority recognised that there was a general public interest in relation to the ongoing discussions/consultation on the proposal to reduce the standard working week to 35 hours.

80. However, it stated that the matter was specifically of interest to its employees and trade unions involved in the process and that public interest (in the sense of requests,

[4] https://www.foi.scot/decision-2412014

communication or enquiries received from members of public, not employees, in relation to the 35hr working week proposals) had been minimal.

81. The Authority acknowledged that disclosing the information would allow the public to scrutinise the processes and decisions leading to organisational changes designed to reduce operating costs. It stated that this transparency could foster trust in public institutions and ensure that decisions were made in light of consideration of public feedback and scrutiny.

82. Additionally, the Authority noted that disclosure would encourage a culture of openness, where policy making was subject to external input and critique, potentially leading to more informed and democratic decisions.

83. The Authority stated that because it considered that the proposals were of the utmost interest to its employees, it published a significant amount of information for staff on its internal intranet throughout the consultation process. It noted that it continued to maintain and update this area for the purposes of informing and engaging with officers across the council in a fair and transparent manner. It commented that it also provided trade unions, and other stakeholders, with access to information during the process, to allow effective and thorough discussion.

84. However, the Authority argued that it was in the public interest to allow these strategic organisational change discussions to take place in a free and frank manner, so that the decision-making process could be followed effectively.

85. It claimed release of this information could undermine officials' ability to explore all policy options, ultimately harming the efficiency and effectiveness of public services and inhibiting the clerk's ability to take draft minutes during a private meeting. On balance, while it understood the importance of transparency and accountability, it believed that withholding the information was necessary to protect the public interest by ensuring that its deliberative processes were not compromised.

The Applicant's comments on the public interest

86. The Applicant commented that the withheld information related to organisational changes aimed at reducing operating costs, specifically a proposal to reduce the working week and that this was a matter of significant public interest affecting Authority employees, trade unions and taxpayers.

87. She argued that disclosing the information would enable the public to understand the basis for Authority decisions on workforce changes, which impact public services and budgets. The Applicant argued that, to her knowledge, the organisational changes which had since been implemented were never subject to the scrutiny of any Authority committee or of the full Council.

88. The Applicant acknowledged that the Authority did convene on this occasion at the request of opposition councillors but noted that the meeting was held in private and stated that it was not clear that the issues raised by the organisational change were the focus of the private meeting. The Applicant stated that this was despite the sums involved and the divisive nature of the proposals whereby part-time staff were exempt from change, with all change falling on full-time staff.

89. The Applicant stated that the only public document with substantial content in relation to the organisational change appeared to be an Integrated Impact Assessment which was published after implementation of the proposals to comply with the Authority's obligations

under the Equality Act 2010. She argued that the assessment revealed annual savings of £5 million and stated that the changes had a divisive impact on groups with protected characteristics under the Equalities Act 2010.

90. The Applicant claimed that the meeting which was the subject of her request was called by opposition councillors, who claimed the Authority had potentially acted unlawfully under the Equalities Act. (That was referenced in the title of the meeting and in the opposition motion.) The Applicant added that, to the extent the Authority had been acting (potentially) unlawfully, it was in the public interest that information evidencing wrongdoing was disclosed.

91. The Applicant argued that organisational change of this magnitude, with a divisive staff allocation and with the level of public funds involved was a serious public concern and she referenced the Commissioner's definition of public interest[5].

92. The Applicant claimed that the Authority's arguments for withholding the information were generic and did not demonstrate a greater public interest in secrecy. The Applicant referenced the Commissioner's Decision 193/2013[6] (which concerned information relating to the risk management of offenders, where the Commissioner accepted the application of section 30(c) of FOISA on the grounds that there was no public interest in disclosing information which would have major implications for the protection of the public) and argued that no critical harm (i.e. in disclosure of the information) existed here.

93. More generally, the Applicant argued that FOISA had an in-built presumption towards release and that given the topic's relevance to employees and the public, and the lack of specific harm, disclosure served the public interest better.

The Commissioner's view on the public interest

94. The Commissioner has carefully considered all the submissions he has received in this case, along with the withheld information.

95. The Commissioner acknowledges the importance of and public interest in openness and transparency in relation to public authorities' decision making processes and that disclosure of this information would help satisfy that interest.

96. He also acknowledges that there may be occasions where particular withheld information might, for a variety of reasons, be considered sensitive but where the nature of this withheld information nevertheless meant its disclosure was in the public interest. On the basis of the submissions and the nature of the withheld information in this appeal, the Commissioner does not consider that to be the case in all the circumstances of this particular appeal.

97. He considers that the public interest in transparency has been met with the Authority's disclosure of some information about the meeting, both to staff through its intranet and more widely, and he does not consider that the public interest wholly equates to the interests of staff impacted by the changes (without minimising the interests of those employees or of the potential impact of the changes upon those staff).

98. He also considers that while there is a degree of public interest in the particular withheld information in this case, he does not consider the nature of that information to be such that the public interest in its disclosure outweighs the public interest in withholding it, as set out by the Authority.

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[5] https://www.foi.scot/sites/default/files/2023-07/PublicInterestTestFOISA_2023.pdf

[6] https://www.foi.scot/decision-1932013

99. He also considers (in relation to the Applicant's point about whether the Authority had (potentially) acted unlawfully) that any elected member (or indeed any other individual or organisation, such as a trade union) with concerns and/or evidence that the Authority had acted unlawfully in relation to its treatment of staff or particular groups of staff could make public these concerns. He does not consider that disclosure of this particular withheld information is by any means the only method by which those with knowledge of, or concerns about, unlawful action by a public body could raise these concerns. In saying that, the Commissioner is not indicating that disclosure of the information would provide any such confirmation (of unlawful action), merely that various other avenues exist by which concerned parties could raise any such concerns.

100. The Commissioner acknowledges the Applicant's concerns about the level of public funds involved (usually a concern which arises, in his view, in relation to expenditure) but he also notes that Applicant states that the changes were expected to save £5 million annually. He is therefore not clear where the specific concern over the level of public funds lies.

101. The Commissioner is not persuaded by the public interest arguments the Applicant has made in this case, and he considers the public interest arguments made by the Applicant were not wholly clear or cohesive. Moreover, he considers Decision 193/2013 to have minimal relevance to this case, given the difference in subject matter between the appeals. In any case, he would again stress that each decision he issues is based on the circumstances of that specific case.

102. In all the circumstances of this case, and given all the comments made, the Commissioner has concluded that the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in section 30(c) of FOISA. Therefore, the Commissioner finds that the Authority was entitled to withhold the information in line with section 30(c) of FOISA.

103. As the Commissioner is satisfied that the information was properly withheld under section 30(c) of FOISA, he is not required to go on to consider the application of the exemptions in sections 30(b)(i) and (ii) and 36(1) (Confidentiality) of FOISA.

Timescale breach

104. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.

105. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

The Authority's handling of the requirement for review

106. In her application to the Commissioner the Applicant stated that the Review Panel of the Authority (which carried out the review of the Authority's response to the Applicant's information request) was not in a position to make the decision that it did because it had not had sight of all of the information in question. The Applicant therefore argued that its decision-making process was therefore fatally flawed.

107. The Commissioner notes the Applicant's concerns about the review panel but in his view FOISA does not specify how an Authority should proceed when it receives a requirement for review. However, he considers that an authority must be satisfied that it has considered all

relevant factors and that it has identified all relevant information, when considering and responding to a requirement for review so that, in the event of an appeal to his office, it can evidence its position. It is clear, from the Commissioner's comments in paragraphs 23 – 25 above, that the Authority failed to do that in this case.

108. As the Commissioner has already considered the Authority's handling of its review outcome in paragraphs 23 – 25 above, he will not repeat his views again here.

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 failing to respond to the Applicant's request for information within the timescale laid down by section 10(1) of FOISA, and by initially failing to identify all of the information falling within the scope of the request (and therefore comply with section 1(1)), the Authority failed to comply with Part 1 of FOISA.

However, by correctly applying section 30(c) of FOISA to all of the withheld information (including the two documents identified during the investigation) the Authority complied with Part 1.

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

19 May 2026