



Scottish Information
Commissioner
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Decision Notice 123/2026

Redaction of the James Hamilton report

Authority: Scottish Ministers
Case Ref: 202500513

Summary

The Applicant asked the Authority for information relating to the redaction of the independent report by James Hamilton on the First Minister's self-referral under the Scottish Ministerial Code. The Authority advised the Applicant that it did not hold some of the information requested, it provided other information and withheld some information as it considered it was legally privileged and that some of it was also exempt from disclosure under section 26(c) (contempt of court) of FOISA. The Commissioner investigated and found that the Authority had complied with FOISA in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 17(1) (Information not held); 36(1) (Confidentiality); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 13 January 2019, the First Minister referred to the independent advisers on the [Scottish Ministerial Code](#)¹ (the Ministerial Code) the question of whether she had complied with the Ministerial Code, in connection with a number of meetings and discussions between her and the former First Minister, Alex Salmond. Mr James Hamilton, one of the independent advisers, was appointed to carry out an investigation in order to answer that question.

¹ <https://webarchive.nrscotland.gov.uk/20241027204754/https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

2. On 22 March 2021, Mr Hamilton's [report](#)² was published in a redacted form. Mr Hamilton found no breach of the Ministerial Code by the First Minister.
3. On 21 December 2024, the Applicant made the following request for information to the Authority:

"...in regards to the redaction of James Hamilton's report on the Ministerial Code published in 2021: In the [note on the publication of a redacted report](#)³, Mr Hamilton says [the] following:

"In earlier drafts of the report I attempted to anonymise certain individuals in such cases but these attempts were not successful."

- (1) When Mr Hamilton says that these attempts were not successful, how was he aware that his attempts were not successful (did someone tell him, if so who)? Did his secretariat have access to these earlier drafts? Did he/or his secretariat/independent legal advisor at any point send these earlier drafts to anyone within the Scottish Government?
- (2) I request any and all communications regarding/discussing these earlier drafts by Mr Hamilton, from anyone within the Scottish Government and Mr Hamilton himself.
- (3) I also request any and all communications/minutes regarding/discussing the initial steps of redaction (including the process of setting up the redaction team/the need to set one up) to the process of the final redaction from anyone within the Scottish Government, particularly the redaction team that was seconded, and Mr Hamilton himself? To be clear, I request all communications that mention the need to have the report redacted, to realising the need to form a redaction team, the appointment of those in that team, the redaction process itself, to final editing, and communicating this with line managers and Mr Hamilton, anything and everything to do with this process, including the reaction of Mr Hamilton to the scale of redaction.
- (4) Why was a team within the Scottish Government seconded to redact Mr Hamilton's report? He had an Independent Legal Advisor, if he was indeed an Independent Advisor himself, why was the report not redacted independent from the Scottish Government?
- (5) When did Mr Hamilton receive the final redacted copy of his report/when was he sent it?
- (6) I would like a timeline of events/dates/times of the creation to publication of Mr Hamilton's report:
 - (i) when did he first begin to write it?
 - (ii) when did he complete early drafts?
 - (iii) when did he finish the unredacted report?
 - (iv) when was the redaction team seconded to redact the report?
 - (v) when was the redaction completed?
- (ii) when did Mr Hamilton receive the final redaction report?

² <https://www.gov.scot/publications/independent-report-by-james-hamilton-on-the-first-ministers-self-referral-under-the-scottish-ministerial-code/>

³ [Note+on+the+publication+of+a+redacted+report+-+James+Hamilton.pdf](#)

- (iii) when did he begin to write the "note on the publication of a redacted report"?
 - (iv) when did he complete the "note on the publication of a redacted report"?
 - (v) when did he sent the report to the DFM and when it was published?
4. The Authority did not respond to the information request.
 5. On 10 February 2025, the Applicant wrote to the Authority in respect of its failure to respond.
 6. The Authority notified the Applicant of the outcome of its review on 24 March 2025 in the following terms:
 - For part (1), it disclosed some information to the Applicant and issued him with a notice, in terms of section 17(1) of FOISA, that it did not hold the remaining information.
 - For part (2), it disclosed some information and applied the exemption in section 38(1)(b) of FOISA to withhold some personal information.
 - For part (3), it withheld the information requested under the exemption in section 36(1) of FOISA.
 - For parts (4) and (5), it provided a response to the Applicant.
 - For part (6)(i)-(iii) and (vii)-(viii), it issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested
 - For part (6)(iv)-(vi) and (ix), it provided a response to the Applicant.
 7. On 7 April 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 in the following respects:
 - For part (1), he was not convinced that the Authority did not hold information he asked for and considered that the Authority could not ask James Hamilton for the information requested.
 - For part (2), he doubted that he had been provided with all information held by the Authority falling within the scope of his request.
 - For part (3), he did not believe that all information could be withheld under the exemption in section 36(1) of FOISA. He did not consider that the public interest favoured withholding the information.
 - For part (6), he did not accept that the Authority could not provide a timeline of key dates of James Hamilton's investigation.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 5 May 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.

10. The Authority failed to send the withheld information to the Commissioner by the initial deadline. On 23 May 2025, the Commissioner issued an information notice to the Authority, under section 50(1)(a) of FOISA, requiring it to provide him with the withheld information.
11. On 25 June 2025, the Authority wrote to the Applicant to advise him that it also considered that some of the withheld information was subject to the exemption under section 26(c) of FOISA.
12. On 4 July 2025, the Authority provided the Commissioner with the withheld information in response to his information notice. The case was subsequently allocated to an investigating officer.
13. 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 reliance on sections 17, 26(c) and 36(1) of FOISA.

Commissioner's analysis and findings

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

Searches

15. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the 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.
16. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4) of FOISA. If the authority does not hold the information requested, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
17. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
18. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
19. In response to an element of part (1) and parts (6)(i)-(iii) and (vii)-(viii) of his request, the Authority issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.
20. In response to part (2) of his request, the Authority disclosed to the Applicant a single message between the Secretariat (with their name redacted under section 38(1)(b) of FOISA) and Mr Hamilton.

21. In response to part (3) of his request, the Applicant identified six documents which it withheld from the Applicant in their entirety under the exemption in section 36(1). It additionally applied the exemption in 26(c) of FOISA to four of the six documents.

The Applicant's submissions

22. For part (1) of his request, the Applicant stated that he was not convinced that the Authority did not hold the information requested. He considered that there would be communications regarding the writing of the drafts of Mr Hamilton's report, or discussions surrounding the drafts no longer working, per Mr Hamilton's comments in his note attached to the final published report. He considered it unlikely that there would be no discussion of these points and suggested that the Authority could have asked Mr Hamilton for this information.
23. For part (2) of his request, the Applicant said that he was sceptical that the information provided to him was the sole communication throughout Mr Hamilton's investigation which discussed his earlier drafts of the report. He noted that the Secretariat had access to these earlier drafts and submitted that there must have been, at a minimum, some form of communication in relation to the access and creation of these drafts.
24. For part (6)(i)-(iii) and (vii)-(viii) of his request, the Applicant did not believe the Authority did not know when Mr Hamilton began to write his report, completed early drafts, completed the unredacted report and finished the note on the publication of the redacted report. He considered these to be "critical/crucial junctures in the process of the report" and that there would be communication between Mr Hamilton and his Secretariat or others surrounding these points in the process.
25. The Applicant argued that it was implausible that the Secretariat had received no communication from Mr Hamilton to state that he had completed his unredacted report and that it was ready for redaction. He again suggested that the Authority could have communicated with Mr Hamilton to clarify these points.

The Authority's submissions

26. The Authority explained that all documents relating to Mr Hamilton's review that were held by the Secretariat on his behalf were transferred to the Authority's Propriety and Ethics Team on 21 December 2023, following the decision by the Authority on 20 December 2023 not to appeal to the Supreme Court following the outcome of *The Scottish Ministers v The Scottish Information Commissioner* on 6 December 2023. It noted that Mr Hamilton had confirmed that he did not hold any additional information to that held by the Secretariat. All of these documents were stored centrally within a single folder set up for this purpose.
27. The Authority noted that all of the communications between Mr Hamilton and his Secretariat were stored in the single folder referred to in the preceding paragraph. It said that it had individually reviewed the records in that file and that Mr Hamilton had not gone into further detail as to why he felt his initial attempts to make redactions himself had failed.
28. The Authority confirmed that it did not, and had never held, this information. It submitted that providing any other response to this question would be "speculation".
29. Given that Mr Hamilton had confirmed in writing to the Authority that he did not hold further information, the Authority said that it did not consider it necessary to contact him again. It acknowledged the Applicant's suggestion that it could ask Mr Hamilton for this information at this stage but noted that FOISA required it to consider recorded information held at the point the request was made.

30. The Authority advised it did not hold a timeline of events/dates/times of the creation of Mr Hamilton's report and said that there had been no requirement or reason for it to create such a timeline. Where it held the information in relation to the other elements of part (6) of the Applicant's request, it had answered those questions. It confirmed that it had again individually reviewed the records in the single folder created to hold communications between Mr Hamilton and his Secretariat. It reiterated that no information relevant to the request was saved in any other location, including diaries, notebooks or messaging platforms such as Microsoft Teams or WhatsApp.
31. The Authority explained that it had never held a detailed breakdown from Mr Hamilton of when he began drafts of his report. All matters relating to the investigation were for Mr Hamilton to decide on. Having created his report, all relevant information was stored in the single folder referred to above.
32. The Authority noted that for most of the period of Mr Hamilton's investigation the Secretariat was made up by an individual. However, four other individuals were "temporarily assigned" to Mr Hamilton's Secretariat on 16 March 2021 "to provide additional capacity in facilitating the early publication of the report". It explained that this additional report was set out in a minute from the Director, Constitution and Cabinet on 15 March 2021.
33. The Authority confirmed that early drafts of Mr Hamilton's report were shared with the individual acting as the Secretariat for most of the period of his investigation, and that only near-final versions were shared with the four other individuals temporarily assigned to his Secretariat. It noted that the terms of the minute from the Director, Constitution and Cabinet was very clear that the report should not be shared with anyone else without their authorisation or that of the individual who made up the Secretariat for most of the period of Mr Hamilton's investigation.
34. The Authority confirmed that it held no recorded information suggesting that the report was shared further than those individuals acting as Secretariat before it was sent from the Secretariat to the Authority just after midnight on 22 March 2021.
35. The Authority stressed the importance of recognising that at the time the four other individuals were transferred to Mr Hamilton's Secretariat they were not considered as part of the Authority, but as part of his Secretariat. It considered this distinction important for the interpretation of "anyone else within the Scottish Government".

The Commissioner's view

36. The Commissioner has taken account of all the relevant submissions provided by both parties.
37. As a starting point, the Commissioner will consider the Authority's interpretation of parts (1) and (2) of the Applicant's request, both of which referred to "earlier draft" of Mr Hamilton's report. As stated above (at paragraph 3), the request asked for information in relation to Mr Hamilton saying: "In earlier drafts of the report I attempted to anonymise certain individuals in such cases, but these attempts were not successful."
38. In the circumstances, the Commissioner considers it reasonable to interpret parts (1) and (2) of the Applicant's request to mean a specific type of earlier draft (i.e. drafts where Mr Hamilton had attempted to anonymise certain individuals). He does not consider the Applicant's request extended to near-final versions of the report (i.e. like those shared with the four individuals temporarily assigned to the Secretariat).

39. The Commissioner notes that the Authority, in the review outcome, explicitly set out its interpretation of part (3) of the Applicant's request as follows:
- "In response to your third question, I have interpreted it as communications between Mr Hamilton on one hand, and Scottish Government officials (including his Secretariat) on the other."
40. Given the similarities between these parts of the Applicant's request, the Commissioner accepts that it was reasonable for the Authority to have interpreted part (2) in the same way that it did part (3). He also notes that the Applicant has not objected to the Authority's interpretation of part (3) of his request. In the circumstances, the Commissioner is satisfied that the Authority's interpretation of part (3) – and therefore part (2) – of the Applicant's request was reasonable.
41. Turning to the searches undertaken by the Authority in response to the Applicant's request as a whole, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and he is satisfied, on balance, that it does not (and did not, on receipt of the request) hold any further information than it has already identified. He considers that the Authority has provided a reasonable explanation of why it does not hold some of the information requested and why it does not hold additional or further information in addition to that identified already.
42. In the circumstances, the Commissioner considers that the Authority's searches were reasonable and would be capable of locating the information requested if it was held. The Authority has explained in detail how information relating to the subject matter of the request is stored and that each record was reviewed individually to identify any information falling within the scope of the request.
43. While the Applicant believed and expected additional or further information to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide – his remit is limited to establishing the extent to which the information actually requested is held.
44. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in parts (1), (6) (i), (ii), (iii), (vii) and (viii) of his request. He is also satisfied that the Authority does not hold any additional or further information relevant to the parts of the Applicant's request in respect of which the Authority did not issue a notice in terms of section 17(1) of FOISA.

Section 36(1) – Confidentiality

45. In response to part (3) of the request, the Authority applied the exemption in section 36(1) to withhold six documents in their entirety. For four of these documents, the Authority additionally applied the exemption in section 26(c) of FOISA.
46. Section 36(1) of FOISA exempts from disclosure information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
47. Legal advice privilege applies to communications in which legal advice is sought or provided. For legal advice privilege to apply, certain conditions must be fulfilled:
- (i) The information must relate to communications with a professional legal adviser, such as a solicitor or advocate

- (ii) The legal adviser must be acting in their professional capacity, and
- (iii) The communications must occur in the context of the legal adviser's professional relationship with their client.

- 48. There is a further matter to be considered, however, before the Commissioner can determine whether, or the extent to which, the section 36(1) exemption in FOISA is applicable in the circumstances of this case.
- 49. The information cannot be privileged unless it is also confidential. For the section 36(1) exemption in FOISA to apply, the withheld information must be information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. In other words, the claim must have been capable of being sustained at the time the exemption is claimed.
- 50. A claim of confidentiality cannot be maintained where, prior to a public authority's consideration of an information request or conducting a review, information has been made public, either in full or in a summary sufficiently detailed to have the effect of disclosing the advice. Where the confidentiality has been lost in respect of part or all of the information under consideration, any privilege associated with that information is also effectively lost.

The Applicant's submissions on section 36(1)

- 51. The Applicant disagreed with the application of the exemption in section 36(1) of FOISA in response to part (3) of his request. He did not believe that all communications with regard to the redaction process were legally privileged.
- 52. The Applicant accepted "that in some cases there will be specific discussions in regards to how not to break contempt of court laws". However, he did not accept that every aspect of the redaction process would comprise communications between a client and their legal advisor. For example, he considered that communications surrounding the "initial setting up of the need for redaction....and the realisation that redaction will be necessary" would not be legally privileged.

The Authority's submissions on section 36(1)

- 53. The Authority stated that all of the withheld information related to communications with, or referring to communications with, in-house legal advisers acting in their professional capacity, with the Authority as the client, in which legal advice was sought and provided.
- 54. The Authority explained that the withheld information included material which evidenced the substance of these communications. It confirmed that all of the material was "either made or affected for the principal or dominant purpose of seeking or giving legal advice or evidenced those communications."
- 55. The Authority considered that disclosure of the withheld information would breach legal professional privilege by divulging information about the points being considered by lawyers, the extent of their comments and the issues being flagged up for further consideration. It stated that all of the necessary conditions for legal advice privilege to apply were satisfied.
- 56. The Authority further argued that all of the communications were subject to the Law Officers Convention reflected in the [Scottish Ministerial Code](https://www.gov.scot/publications/scottish-ministerial-code-2023-edition/pages/3/)⁴, which prevents the Authority from revealing whether Law Officers either have or have not been asked to provide legal advice

⁴ <https://www.gov.scot/publications/scottish-ministerial-code-2023-edition/pages/3/>

on any matter. It noted that paragraph 2.38 of the Ministerial Code stated that Ministers must not divulge who provided the advice, whether from Law Officers or others.

57. The Authority submitted that a claim of confidentiality of legal communications could be maintained because the correspondence in question was only shared between the Authority and its legal advisers. Apart from being provided to the Commissioner as part of his investigation, the advice had not at any time been shared with anyone out with the Authority. As such, the information remained confidential at the time it responded to the request and requirement for review. The Authority therefore considered that legal professional privilege had not been waived.

The Commissioner's view on section 36(1)

58. As stated above, the Commissioner is satisfied that the Authority's interpretation of part (3) of the Applicant's request was reasonable in the circumstances as were the searches it undertook in response to his request.
59. The Commissioner has carefully considered the information withheld under the exemption in section 36(1) of FOISA and the circumstances in which it was created. Having done so, he is satisfied that the information meets the conditions for legal advice privilege to apply.
60. All of the conditions stated above apply; the information involves communications with a legal adviser (in-house solicitor), who is acting in their professional capacity, and the communications occur in the context of the legal adviser's professional relationship with their client. The Commissioner is also satisfied that the confidentiality of the legal advice has not been lost or waived.
61. The exemption in section 36(1) is a qualified exemption, which means that it is subject to the public interest test as set out in section 2(1)(b) of FOISA. The exemption can only be upheld if the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

The public interest test – section 36(1)

The Applicant's submissions

62. The Applicant said that Mr Hamilton's report was critical piece of investigation regarding the then First Minister, which had the potential to result in the First Minister's resignation given that she had been accused of misleading Parliament.
63. In support of the public interest in matters relating to the Hamilton report, the Applicant referred to paragraph 112 of [Decision 065/2025](https://www.foi.scot/decision-0652025)⁵ of the Commissioner which stated that these remained matters in which there is a clear public interest.
64. The Applicant considered that the redactions to the report itself were "still a point of discussion within the public sphere....as many believe that the report was overly-redacted, to the point of protecting political interests". He noted that Mr Hamilton had himself said in his [note](https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/independent-report-by-james-hamilton-on-the-first-ministers-self-referral-under-the-scottish-ministerial-code/documents/note-on-the-publication-of-a-redacted-report/note-on-the-publication-of-a-redacted-report)⁶ on the publication of a redacted report:

⁵ <https://www.foi.scot/decision-0652025>

⁶ <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/independent-report-by-james-hamilton-on-the-first-ministers-self-referral-under-the-scottish-ministerial-code/documents/note-on-the-publication-of-a-redacted-report/note-on-the-publication-of-a-redacted-report>

“A redacted report that effectively erases the role of any such individual in the matters investigated in the report cannot be properly understood by those reading it, and presents an incomplete and even at times misleading version of what happened.”

65. The Applicant also noted Mr Hamilton’s comments in his note that he was “deeply frustrated” at the need to have the report redacted and that Mr Hamilton believed full publication was “in the public interest”.
66. The Applicant therefore argued that it was in the public interest for the information withheld under the exemption in section 36(1) of FOISA to be published.

The Authority’s submissions

67. While the Authority acknowledged the public interest in disclosure of the withheld information to promote openness and transparency, it considered that there was a very strong public interest in maintaining the exemption relating to legal professional privilege in order to ensure confidentiality of communications.
68. The Authority considered that it was important in all cases that lawyers can provide free and frank legal advice which considers and discusses all issues and options, without fear that that advice may be disclosed and, as a result, potentially taken out of context.
69. The Authority submitted that an expectation that legal advice could be released would inevitably lead to the legal advice being much more circumspect and therefore less effective. In a matter where there was a risk that disclosing information in error could breach court orders, it argued that it was important that free and frank legal advice could be given to ensure that decisions were taken in full possession of thorough and candid legal advice. This ensured that the Authority could take decisions in a fully informed legal context, having received legal advice in confidence as any other client would.
70. On balance, the Authority considered that, in this instance, the public interest in maintaining the exemption outweighed that of disclosure, given the overriding public interest in maintaining the confidentiality of communications between lawyers and their clients and the public interest in allowing for full and detailed internal consideration of the legal issues in relation to publishing Mr Hamilton’s report.

The Commissioner’s view

71. As the Commissioner has noted in several previous decisions, the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds.
72. In a freedom of information context, the strong inherent public interest in maintaining legal professional privilege was emphasised by the High Court (of England and Wales) in the case of [Department for Business, Enterprise and Regulatory Reform v Information Commissioner and O’Brien \[2009\] EWHC 164 \(QB\)](#)⁷. Generally, the Commissioner will consider the High Court’s reasoning to be relevant to the application of section 36(1) of FOISA.
73. The Commissioner accepts that there is a considerable, in-built, public interest in maintaining the ability of the Authority to receive full, unhindered legal advice. However, he also

report.govscot.gov.uk/document/Note%20on%20the%20publication%20of%20a%20redacted%20report%20-%20James%20Hamilton.pdf

⁷ [https://www.bailii.org/cgi-bin/format.cgi?doc=ew/cases/EWHC/QB/2009/164.html&query=\(title:\(+o%27brien+\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=ew/cases/EWHC/QB/2009/164.html&query=(title:(+o%27brien+)))

acknowledges that there will be occasions where the significant public interest in favour of withholding legally privileged communications may be outweighed by a public interest in disclosing the information.

74. While the Commissioner recognises the public interest in understanding the legal advice received regarding the redactions to Mr Hamilton's report (particularly given the strong, wider public interest in Mr Hamilton's investigation into the former First Minister under the Ministerial Code and matters relating to it), he must also take account of the important public interest in legal professional privilege itself and the public interest in allowing public authorities to obtain confidential legal advice.
75. As indicated above, the Commissioner acknowledges that there will be occasions where the significant public interest in favour of withholding legally privileged communications may be outweighed by a compelling public interest in disclosing the information (and he has on occasion required disclosure of such information, where the particular circumstances of the appeal supported it). For example, disclosure may be appropriate where (the list is not exhaustive):
- the privileged material discloses wrongdoing by/within an authority
 - the material discloses a misrepresentation to the public of advice received
 - the material discloses an apparently irresponsible and wilful disregard of advice
 - the passage of time is so great that disclosure cannot cause harm.
76. As stated above, the Commissioner accepts that there is a strong public interest in a Scottish public authority being able to receive full, unhindered legal advice. Without such comprehensive advice being available to the Authority, its ability to come to fully informed decisions would be restricted, which would not be in the public interest.
77. The Commissioner must be careful not to reveal the specific content of the withheld information. However, it is clear from the terms of part (3) of the request that the withheld information comprises legal advice on redactions to be made to Mr Hamilton's report prior to publication.
78. The Commissioner previously accepted in [Decision 135/2022](https://www.foi.scot/decision-1352022)⁸, which considered the unredacted version of Mr Hamilton's final report, that the information redacted from the published version was exempt from disclosure under section 26(c) of FOISA. In all of the circumstances, considering this specific information, he is satisfied that disclosure of the withheld information in this case would not satisfy any of the non-exhaustive factors set out in paragraph 75 above.
79. In the circumstances, therefore, having considered the submissions made by both parties together with the content of the relevant withheld information, the Commissioner is not satisfied that the public interest in disclosure of the withheld information is significant enough in this case to outweigh the strong public interest in maintaining the confidentiality of communications between legal adviser and client.
80. In conclusion, after careful consideration, the Commissioner is satisfied that the Authority correctly withheld the information under the exemption in section 36(1) of FOISA.

⁸ <https://www.foi.scot/decision-1352022>

81. As stated above, the Authority also applied the exemption in section 26(c) of FOISA to some of the information it withheld under the exemption in section 36(1). Given that the Commissioner is satisfied that the information to which the Authority also applied section 26(c) of FOISA is exempt under section 36(1), he is not required to consider whether that information is also exempt under section 26(c).

Commissioners Additional Comments

82. The Commissioner issued this Decision Notice based on the information presented to him during his investigation. He notes that the Authority has separately released some of the withheld information - with different redactions applied to those submitted to him. This is regrettable and confusing and a further consequence of the appalling case handling which is a hallmark of these cases.

Decision

The Commissioner finds that 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.

David Hamilton
Scottish Information Commissioner
21 May 2026