



Scottish Information
Commissioner
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Decision Notice 138/2026

Complaints about LGBT Youth Scotland

Applicant: Anonymous

Authority: Office of the Scottish Charity Regulator

Case Ref: 202500107

Summary

The Applicant asked the Authority for information relating to complaints it had received regarding LGBT Youth Scotland since 1 January 2024. The Authority withheld the information on the basis that disclosure would, or would be likely to, prejudice substantially its ability to carry out its statutory functions. During the investigation, the Authority disclosed some of the withheld information to the Applicant on the basis that circumstances had changed since the time of the review outcome. The Commissioner investigated and found that the Authority was entitled to withhold all of the information requested at the time of the review outcome. However, the Commissioner also concluded that the Authority failed to comply with FOISA by not identifying certain information relevant to the request until during his investigation.

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); 35(1)(g) (Law enforcement); 47(1) and (2) (Application for decision by Commissioner).

Charities and Trustee Investment (Scotland) Act 2005 (CTISA) sections 1(5)(d) (Office of the Scottish Charity Regulator); 28(1) and (2) (Inquiries about charities etc.).

Background

1. On 3 December 2024, the Applicant made a request for information to the Authority. He asked for copies of all complaints/concerns received by the Authority regarding LGBT Youth Scotland since 1 January 2024.
2. The Authority responded on 17 December 2024. It withheld the information requested under the exemption in section 35(1)(g) of FOISA.
3. Later that day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not agree that the exemption applied to the extent claimed and he believed that the public interest favoured disclosure.
4. The Authority notified the Applicant of the outcome of its review on 15 January 2025, which fully upheld its original decision.
5. On 15 January 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 for the reasons set out in his requirement for review.

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 31 January 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 subsequently 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 application of the exemption in section 35(1)(g) of FOISA and the searches it undertook in response to the request.

Commissioner's analysis and findings

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

Information disclosed during the investigation

10. During the investigation, the Authority disclosed some of the withheld information to the Applicant on the basis that it had concluded its inquiry into LGBT Youth Scotland. However, the Authority continued to withhold some information from the Applicant under the exemptions in sections 30(b) and 38(1)(b) of FOISA.
11. When determining whether information was properly withheld, the Commissioner must make his assessment in relation to the specific circumstances of the case on each occasion and,

as recognised by the Court of Session in [Scottish Ministers v Scottish Information Commissioner \[2006\] CSIH 8](#)¹ (at paragraph [31]), at the time of the review (at the latest).

12. The Authority did not retire its reliance on the exemption in section 35(1)(g) of FOISA at the time of the review outcome in relation to all information falling within the scope of the Applicant's request. The Commissioner must therefore first consider whether the Authority was entitled to withhold the information requested (including the remaining withheld information now being withheld under other exemptions) under this exemption.
13. If the Commissioner finds that the Authority was not entitled to rely on the exemption in section 35(1)(g) of FOISA at the time of the review, he will go on to consider whether the Authority was entitled to withhold the information it has continued to withhold under the exemptions in sections 30(b) and 38(1)(b) of FOISA.

Section 35(1)(g) – Law enforcement

14. Under section 35(1)(g) of FOISA, information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the exercise by any public authority (as defined by the Freedom of Information Act 2000) or Scottish public authority (as defined by FOISA) of its functions for any of the purposes listed in section 35(2) of FOISA.
15. The Authority is a Scottish public authority as defined by FOISA (see Schedule 1 to FOISA).
16. The Authority argued that disclosure of the information requested would, or would be likely to, prejudice substantially the exercise of its functions for two of the purposes specified in section 35(2) of FOISA:
 - to protect a charity against misconduct or mismanagement (whether by trustees or other persons) in its administration (section 35(2)(f)); and
 - to protect the property of a charity from loss or mismanagement (section 35(2)(g)).
17. Section 35(1)(g) is a qualified exemption, in that it is subject to the public interest test set out in section 2(1)(b) of FOISA. In addition, the exemption can only apply where substantial prejudice would, or would be likely to, occur as a result of disclosure of the information.
18. There is no definition in FOISA of "substantial prejudice", but the Commissioner's view is that the harm in question must 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 and 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.
19. There are three separate matters the Commissioner must consider in determining whether this exemption applies:
 - (i) Does the Authority have a function in relation to one or more of the purposes mentioned in section 35(2) of FOISA?
 - (ii) If he is satisfied that it does, would disclosure of the information prejudice substantially, or be likely to prejudice substantially, the Authority's ability to exercise the function(s)?

¹ <https://webarchive.nrscotland.gov.uk/20240713015729/https://scotcourts.gov.uk/search-judgments/judgment?id=a94886a6-8980-69d2-b500-ff0000d74aa7>

- (iii) If he accepts that such prejudice would, or would be likely to, occur, the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information. Unless he finds that it does, he must order the Authority to disclose the information.

The Authority's functions

20. The Commissioner is satisfied that the Authority exercises functions which relate to the purposes described in section 35(2)(f) and (g) of FOISA. Section 1(5)(d) of CTISA states that one of the Authority's general functions is to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct.
21. In addition, section 28(1)(a) of CTISA provides that the Authority may at any time make inquiries, either generally or for particular purposes, with regard to a charity.

Would disclosure cause, or be likely to cause, substantial prejudice?

22. The Commissioner must now consider whether disclosure of the information would have been likely to prejudice substantially the exercise of the functions identified by the Authority.

The Applicant's submissions

23. In his requirement for review, the Applicant commented that the Authority's role is that of an independent regulator: its role is not to protect the reputation of charities that the Authority is there to scrutinise. He submitted that the information requested was important to public bodies and parents/guardians in allowing them to make informed decisions about whether to continue to fund or trust LGBT Youth Scotland, something that should take precedence over any desire to protect the reputation of the charity.
24. The Applicant did not consider that the Authority had explained how disclosure of the information requested would substantially prejudice the Authority's ability to carry out its statutory functions. He did not accept the suggestion that engagement with the Authority was in some way voluntary for charities and argued that disclosure of the information requested should make no difference to the level of engagement charities are obliged to provide to the Authority, particularly given the series of powers the Authority has under CTISA to obtain information in connection with its inquiries.
25. In his application, the Applicant reiterated that he did not believe that the exemption in section 35(1)(g) of FOISA had been properly applied and that he disagreed that disclosure would substantially prejudice the Authority's ability to carry out its functions.
26. The Applicant noted that disclosure under FOI law is not voluntary, but a legal obligation. He argued that charities would understand this and therefore there was no reason that complying with the law (i.e. disclosure of the information requested under FOISA) should affect confidence in the Authority.
27. The Applicant disagreed that disclosure of the information requested would damage the willingness of the public to provide the Authority with information in confidence or that those involved might be able to be identified. He said that this should not be the case as any identifying information could be legitimately redacted. He also commented that public disclosure of the information requested could encourage others to come forward with their own concerns, if they were unaware of the Authority's existing inquiries, which would allow the Authority to carry out a more comprehensive investigation.

The Authority's submissions

28. The Authority confirmed that at the time the request was received and at the review, LGBT Youth Scotland was subject to an ongoing inquiry by the Authority. It said the inquiry was opened after the Authority received several concerns about alleged serious safeguarding issues within LGBT Youth Scotland.
29. As the Authority's inquiries were ongoing at the time of the request and the review, the Authority said that it considered it appropriate to withhold the information requested under the exemption in section 35(1)(g) of FOISA.
30. The Authority submitted that disclosure of the information requested before it had completed its inquiries would have been likely to have caused damage to LGBT Youth Scotland, to its reputation and to its trustees. It explained that there were avenues of the inquiry still to be explored and disclosure might have compromised the Authority's inquiries and/or the Authority's decision-making. As the inquiry included allegations of a sensitive nature, it noted that the Authority could have been required to take formal statutory action or refer the matter to another statutory authority.

The Commissioner's view

31. The Commissioner has considered the submissions made by both the Applicant and the Authority, as well as the withheld information and the context in which it is held.
32. As rehearsed earlier, when determining whether information was properly withheld, the Commissioner must make his assessment in relation to the specific circumstances of the case on each occasion and at the time of the review (at the latest). In this case, the Authority's inquiries into LGBT Youth Scotland were ongoing at the time of the review.
33. The Commissioner considers the prejudice claimed by the Authority to be pertinent in this case, particularly that disclosure of the withheld information prior to the completion of its inquiry would have been, or would have been likely to have been, damaging to the Authority's inquiry (and to future inquiries) and to LGBT Youth Scotland, its reputation and its trustees. In the context of an ongoing investigation, which had yet to reach any conclusion, and the necessary protections afforded by such an investigation, the Commissioner cannot accept the Applicant's view that potential harm to LGBT Youth Scotland can be dismissed as being of no relevance.
34. It is not possible for the Commissioner to publish all his reasoning, as to do so would involve direct reference to the withheld information. However, in all the circumstances of the case, he is satisfied that disclosure of the majority of the withheld information would have prejudiced substantially, or would have been likely to prejudice substantially, the Authority's exercise of its functions for the purposes listed in section 35(2)(f) and (g) of FOISA.
35. The exemption in section 35(1)(g) is subject to the public interest test contained in section 2(1)(b) of FOISA. This means that even where the Commissioner accepts substantial prejudice for the purposes of section 35(1)(g) of FOISA, he must still order the information to be disclosed unless he is satisfied, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs that in disclosing the information.

Public interest test – section 35(1)(g)

The Applicant's submissions

36. The Applicant disagreed that the Authority had properly applied the public interest test.

37. The Applicant did not consider the potential for disclosure of the information requested to cause reputational damage to LGBT Youth Scotland to be a public interest case against disclosure. In fact, if the information would damage the reputation of LGBT Youth Scotland, he commented that it may be that the charity deserved to have its reputation damaged.
38. The Applicant also commented that the Authority appeared to have given no weight to the role LGBT Youth Scotland has and the functions it performs. He considered that these factors added weight to the public interest in disclosure of the information requested as the public had the right to know if valid concerns had been raised about the charity and whether they had been investigated. He also noted that LGBT Youth Scotland received substantial amounts of public money and was directly engaged in hundreds of schools, thereby coming into contact with vulnerable children. If legitimate concerns existed about LGBT Youth Scotland, then it was in the public interest for this information to be disclosed.

The Authority's submissions

39. The Authority recognised that the following issues were in favour of disclosure of the withheld information:
- Disclosure would promote openness and transparency in the Authority's decision-making processes, thereby improving accountability and participation
 - Disclosure would enhance public understanding of the Authority's investigation and other processes which contribute to ensuring that the Authority is properly discharging its functions and regulatory responsibilities
 - Disclosure would contribute to the administration of justice and the enforcement of law
 - Disclosure would ensure fairness in relation to applications or complaints, reveal malpractice or enable the correction of misleading claims.
40. However, the Authority considered that the following issues were in favour of maintaining the exemption in section 35(1)(g) of FOISA:
- Disclosure of the withheld information under FOISA – and therefore to the world-at-large – would be damaging to LGBT Youth Scotland, its trustees and its reputation, without the protection afforded by the Authority's inquiry process or the courts
 - The Authority must have the confidence of individuals and organisations when carrying out its statutory functions. Should organisations or individuals believe that information will routinely be made public without the protection afforded by relevant criminal or civil proceedings, confidence in the Authority would be undermined
 - The inquiry into LGBT Youth Scotland was open and ongoing at the time of the review, so disclosure would have prejudiced the administration of justice and the enforcement of law. Disclosure of the withheld information prior to the conclusion of any inquiry would substantially prejudice the Authority's ability to carry out its functions and inhibit its ability to investigate misconduct or mismanagement in this and other cases
 - Disclosure of the withheld information might have damaged the willingness of the public to provide the Authority with information in confidence, a consequence that could seriously undermine the robustness of the Authority's inquiry processes.

41. In all of the circumstances, the Authority considered that the public interest in maintaining the exemption and in withholding the withheld information at the date of the review outcome was greater than that in disclosing the information.

The Commissioner's view

42. The Commissioner has considered all of the relevant submissions made by the Applicant and the Authority.
43. When determining where the public interest lies, the Commissioner must make his assessment in relation to the specific circumstances of the case on each occasion and, at the time of the review (at the latest). In this case, the Authority's inquiries into LGBT Youth Scotland were ongoing at the time of the review.
44. The Commissioner acknowledges that disclosure of the information requested would enhance scrutiny of the Authority's actions in carrying out its regulatory functions. However, he has to balance the broad public interest in transparency against the strong public interest in maintaining the exemption in section 35(1)(g) of FOISA, with a view to maintaining the effectiveness of the Authority's investigative process.
45. In all the circumstances of the case, the Commissioner is satisfied, on balance, that the public interest in maintaining the exemption (and, by extension, the effectiveness of the Authority's statutory processes) outweighs that in disclosure. He therefore finds that the Authority was entitled to withhold the information requested (at the time of the review outcome) under the exemption in section 35(1)(g) of FOISA.
46. As rehearsed earlier, the Authority disclosed some of the withheld information to the Applicant during the investigation on the basis that circumstances had changed since the time of the review outcome. However, it continued to withhold some information under the exemptions in sections 30(b) and 38(1)(b) of FOISA.
47. Given that the Commissioner is satisfied that the information requested was properly withheld in terms of section 35(1)(g) of FOISA at the time of the review outcome, he is not required to (and will not) go on to consider the application of the exemptions in sections 30(b) and 38(1)(b) of FOISA (which were applied after the time of the review outcome and on the basis of circumstances which postdated the review outcome).
48. It is open to the Applicant to make a new request for this information to the Authority. Any subsequent appeal to the Commissioner in respect of a new request for this information would require the Commissioner to consider the circumstances as at the date of the review outcome for that request.

Searches

49. 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.
50. 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.
51. 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.

52. 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.
53. During the investigation, the Applicant expressed his belief that the Authority held further information falling within the scope of his request than it had identified.
54. The Commissioner raised these concerns with the Authority. In response, the Authority identified further information relevant to the Applicant's request and disclosed this information to him. However, the Applicant remained of the belief that the Authority held further relevant information.
55. It is evident that the Authority failed to identify some information as falling within the scope of the Applicant's request until during the Commissioner's investigation. In failing to identify this information by the date of the Authority's review outcome at the latest, the Commissioner finds that the Authority failed to deal with the Applicant's request fully in accordance with section 1(1) of FOISA.
56. The Commissioner acknowledges that the Applicant has ongoing concerns regarding whether the Authority has identified all information falling within the scope of his request. Given the nature and timing of the request, the Commissioner's conclusion is that the Authority was entitled to withhold all relevant information under the exemption in section 35(1)(g) of FOISA, he considers that the Applicant's concerns in this respect are best addressed by him making a new request for information to the Authority.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that, by correctly withholding the information requested under the exemption in section 35(1)(g) of FOISA, the Authority complied with Part 1.

However, the Commissioner finds that the Authority failed to comply with Part 1 (specifically, section 1(1)) by not identifying, by the date of the review outcome (at the latest), all of the information it held within the scope of the Applicant's request.

As the Commissioner is satisfied that the Authority would have been entitled to withhold (at the date of the review outcome) all information it held that fell within the scope of the Applicant's request, he does not require the Authority to take any action in respect of 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.

Euan McCulloch
Head of Enforcement

29 May 2026
