



Scottish Information
Commissioner
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Decision Notice 168/2026

Communications between the First Minister/Scottish Government and GTCS

Authority: General Teaching Council for Scotland
Case Ref: 202501581

Summary

The Applicant asked the Authority for all correspondence between the First Minister/Scottish Government and the Authority over a specified period. The Authority disclosed some information but withheld other information on the basis that disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs. The Commissioner investigated and found that the Authority had wrongly withheld the information. He required the Authority to disclose the information to the Applicant.

Relevant statutory provisions

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

Background

1. On 17 June 2025, the Applicant made the following request for information to the Authority:
“Please provide a copy of all information held in relation to all correspondence over the past 3 months only between the Scottish Government, the First Minister's Office and John Swinney's Constituency Office with the [Authority]. To include all letters, emails sent and received.”

2. On 9 July 2025, the Authority issued the Applicant with a Fees Notice of £405. On the same date, the Applicant challenged the Fees Notice and the Authority clarified that the fee to be paid was £30.50. The Applicant paid the fee the following day.
3. On 16 July 2025, the Authority advised the Applicant that it would not meet the statutory deadline for responding to the request and advised that it would provide an update by 25 July 2025.
4. On 28 July 2025, the Authority advised the Applicant that there was a significant amount of information to review and that it would provide an update by the end of the week.
5. The Authority responded on 1 August 2025. It disclosed some information to the Applicant and withheld other information under the exemptions in sections 30(b)(ii), 30(c), 38(2)(a) and 38(1)(b) of FOISA.
6. On 6 August 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he:
 - doubted that the exemptions in sections 30(b)(ii) and 30(c) of FOISA were engaged
 - was disappointed with the delay in responding to his request
 - considered the initial Fees Notice issued was inaccurate.
7. The Authority notified the Applicant of the outcome of its review on 3 September 2025, in the following terms:
 - It maintained reliance on the exemptions in sections 30(b)(ii) and 30(c) of FOISA
 - It apologised for the delay in responding to the information request
 - It also apologised for the confusion arising from the initial Fees Notice it issued and said that it would ensure that future Fees Notices set out the fee to be paid more clearly.
8. On 6 September 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 largely the same reasons set out in his requirement for review. However, he stated that he was only challenging the application of section 30(c) of FOISA to information withheld within two specific letters.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 5 November 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.
11. 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 30(c) of FOISA.

Commissioner's analysis and findings

12. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
13. As stated in previous decisions, in [Scottish Ministers v Scottish Information Commissioner \[2006\] CSIH 8](#)¹, at paragraph [18], the Court of Session recognised that:

"... in giving reasons for his decision, [the Commissioner] is necessarily restrained by the need to avoid, deliberately or accidentally, disclosing information which ought not to be disclosed."
14. In this decision notice, the Commissioner has endeavoured to give as full an account of his reasoning as he can, but, by necessity, in this case the comments of the Court of Session are applicable to some aspects.

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

15. As stated above, the Applicant only challenged the application of the exemption in section 30(c) of FOISA to information withheld in two specific letters. Only that withheld information is considered in this decision notice.
16. 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.
17. The use of the word "otherwise" distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b) of FOISA. 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.
18. The standard to be met in applying the tests contained in section 30(c) of FOISA is high: the prejudice in question must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case-by-case basis, taking into consideration the content of the information and all other relevant circumstances (which may include the timing of the request).

The Applicant's submissions

19. As stated above, the Applicant only challenged the application of the exemption in section 30(c) of FOISA to information withheld within two specific letters. He explained that he considered the Authority's argument in its review outcome that disclosure of this information would cause a chilling effect to be an "exaggeration".
20. The Applicant commented that the Authority had made out it was being transparent when requesting and publishing the review by the Professional Standards Authority for Health and Social Care (PSA). He argued that it was critical that the public had confidence in the Authority as an independent body responsible for child protection and safeguarding and

¹ https://www.bailii.org/scot/cases/ScotCS/2008/CSIH_08.html

understood what action the Authority was taking to resolve issues identified by the PSA review.

21. The Applicant submitted that the best way to inform the public about these matters was for the Authority to not have “secret squirrel discussions” with civil servants and special advisers and that the withheld information should therefore be disclosed.

The Authority's submissions

22. The Authority considered that disclosure of the withheld information would substantially prejudice its ability to conduct its public affairs in the future. In particular, it noted that engaging with officials on a matter related to its work was a vital component to the effective operation of the Authority.
23. In this case, the Authority stated that the participants were not contacted with any indication the correspondence would be disclosed. It stated that the letters openly addressed issues which had been raised between the parties and the challenges associated with the quality assurance of employer practices.
24. The Authority argued that disclosure of the withheld information would, or would be likely to, significantly prejudice its ability to undertake or partake in, essential consultation and discussion in the future, through a chilling effect on both the Authority and other stakeholders. It considered it likely that its ability to correspond would be less frank and open in the future if the withheld information in this case were to be placed in the public domain.
25. The Authority also submitted that disclosure of the withheld information would be likely to inhibit the candour and completeness of future exchanges with stakeholders. It explained that the correspondence at issue involved evaluative discussion of operational challenges and quality assurance matters in Fitness to Teach processes.
26. The Authority considered that if such material were routinely disclosed, officials would reasonably be expected to moderate the content, tone, and detail of their contributions, particularly where views were provisional, critical, or exploratory. It argued that this would directly affect the quality and effectiveness of the Authority's operation, limiting its ability to identify risks, test options and respond to emerging issues through full and frank engagement with key partners.

The Commissioner's view

27. The Commissioner has considered carefully all the submissions made by the Applicant and the Authority, together with the withheld information.
28. While the Commissioner accepts that in some circumstances the withholding of sensitive information may be necessary to maintain the effective conduct of public affairs, he does not believe that is the case here. He is not persuaded that disclosure of the withheld information in the letters, much of which repeats information or views already in the public domain, would cause, or be likely to cause, the substantial prejudice envisaged by the Authority or otherwise required to engage the exemption in section 30(c) of FOISA.
29. The Commissioner notes from the Authority's submissions that it considers that disclosure of the withheld information would, or would be likely to, substantially prejudice its ability to engage in essential consultation and discussion in the future, through a chilling effect on both the Authority and other stakeholders. The Authority also considered that disclosure would, or

would be likely to, have a similar effect by inhibiting the candour and completeness of such future exchanges.

30. While the Commissioner has previously recognised that public authorities should be allowed a private space in which sensitive matters can be discussed and explored, he does not consider that the Authority has demonstrated that disclosure of the withheld information would, or would be likely to, cause the substantial prejudice envisaged by the Authority or otherwise required to engage the exemption in section 30(c) of FOISA.
31. The Commissioner does not consider that the Authority has connected the substantial prejudice it sets out to the specific terms of the withheld information, the content of which he does not view as particularly sensitive. While he must be careful not to reveal the specific content of the withheld information, he notes again that much of the withheld information repeats information or views already in the public domain. This information and these views are (and were, at the time the Authority dealt with the Applicant's request and requirement for review) already in the public domain through a number of sources, including:
 - The Authority's submission to the Citizen Participation and Public Petitions Committee regarding petition PE1979/II
 - The Authority's response to the call for views on the Education (Scotland) Bill and suggested areas for amendment at Stage 2 of the Bill
 - The Professional Standards Authority for Health and Social Care report on advice to the Authority on aspects of its Fitness to Teach process
32. The Commissioner also notes that the letters under consideration are authored by the Authority's Strategic Director, a member of the Executive team. Given the seniority of this individual and the official nature of the letters, the Commissioner considers that the Authority needed to demonstrate why disclosure of the withheld information would realistically inhibit an individual operating at that level from performing, or engaging in, comparable official functions in future. It also needed to demonstrate why similar inhibition would affect other employees engaged in those functions.
33. While the Commissioner does not view the seniority of the author as determinative, he considers it a relevant factor in assessing the substantial prejudice required to engage the exemption in section 30(c) of FOISA.
34. The Commissioner also considers the information and views in the withheld information to have been communicated by the Strategic Director in moderate and uncontroversial terms. Given the subject matter being discussed in the letters and the nature of the information already in the public domain, he does not consider that disclosure of the withheld information would reveal anything materially new or particularly unexpected regarding the position of the Authority.
35. In all of the circumstances, having carefully considered the submissions received from the Authority in relation to the actual information being withheld in this case, the Commissioner is not persuaded that the Authority has evidenced the required substantial prejudice for the exemption in section 30(c) of FOISA to be engaged.
36. The Commissioner therefore finds, based on the submissions he has received, that the Authority was not entitled to apply the exemption in section 30(c) of FOISA to the withheld information.

37. Given that the Commissioner does not accept that the exemption applies to the information withheld under section 30(c), he is not required to consider the public interest test in section 2(1)(b) of FOISA for that information.
38. As no further exemption has been claimed to justify the withholding of the information he has found not to be exempt under section 30(c) of FOISA, the Commissioner requires the Authority to disclose this information to the Applicant.

Handling matters

39. The Commissioner notes that the Applicant expressed dissatisfaction in his application with the Authority's late response to his request and the content of the Fees Notice it initially issued to him. However, in relation to those handling matters, the key issue the Commissioner must consider is whether the Authority's subsequent response to the Applicant's requirement for review was appropriate.
40. The purpose of the review stage in FOISA is to provide authorities with the opportunity to reconsider their handling of an initial information request, in order to ensure that they are satisfied that the request has been dealt with fully in accordance with FOISA, prior to an application being made to the Commissioner (if necessary).
41. An authority may well commit breaches of FOISA regarding its handling of an initial request. Where an authority has subsequently revised its decision and dealt with the request appropriately during the review stage, it will generally be deemed to have complied with FOISA in relation to those matters.
42. The Commissioner notes the Authority's apology to the Applicant in its review outcome for its failure to respond to the request within the statutory timescale laid down by section 10(1) of FOISA and for lack of clarity in the Fees Notice it initially issued. He also welcomes the Authority's commitment to ensure that all future Fees Notices set out the fee to be paid more clearly.
43. In light of the above, the Commissioner will not consider the Applicant's dissatisfaction with these matters further in his decision notice.

Decision

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

Specifically, the Commissioner finds that, by wrongly withholding information under the exemption in section 30(c) of FOISA, the Authority failed to comply with Part 1 (and, in particular, section 1(1)).

The Commissioner therefore requires the Authority to disclose the information withheld under the exemption in section 30(c) of FOISA, by 13 August 2026.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

29 June 2026