Scottish Information Commissioner
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Decision Notice 120/202x

Costs relating to investigation into the Rector

Authority: University of St Andrews
Case Ref: 202501702

Summary

The Applicant asked the Authority for the costs of a specified investigation into the Rector and costs for communication support related to the investigation and connected matters. The Authority withheld the information because it considered it to be commercially sensitive and 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); 2(1)(b) (Effect of exemptions); 30(c) (Effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 29 July 2025, the Applicant made a request for information to the Authority. They asked for:

   (i) A breakdown of all legal costs incurred by [the Authority] in relation to the investigation into [the Rector] – including the initial legal advice, the KC-led investigation, any subsequent legal consultations and responses to appeals – covering the period from 1 November 2023 to 30 June 2025.

   - This should include the total cost paid to each legal firm or barrister, including any King's Counsel instructed.

- Please identify the firms or individuals engaged and the dates of instruction.
- Please specify the cost centres, budget lines, or internal [Authority] funds from which these costs were paid.

(ii) The total cost of any public relations, strategic communications, or reputation management services commissioned by [the Authority] in relation to [the Rector's] statement of November 2023 or the subsequent investigation and appeal process.

- Please include the name(s) of any PR or media firms used, their scope of engagement, and the amount paid.
- Again, please specify the relevant budget sources.

2. By way of background, the Rector is an elected official that acts as president of the University Court. The investigation in question was commissioned by the Authority, and the report[1] was published in April 2024.

3. The Authority responded on 16 August 2025 in the following terms:

- In response to parts (i) and (ii) of the request, it withheld, under the exemption in section 25(1) of FOISA, the names of parties engaged on the basis that the information was otherwise accessible
- In response to part (i) of the request, it withheld, under the exemptions in sections 30(c) and 33(1)(b) of FOISA, the legal costs incurred
- In response to part (ii) of the request, it withheld, under the exemptions in sections 30(c) and 33(1)(b) of FOISA, the external communication costs incurred.

4. On 29 August 2025, the Applicant wrote to the Authority requesting a review of its decision. They stated that they were dissatisfied with the decision because they disagreed with the application of the exemptions in sections 30(c) and 33(1)(b) of FOISA and, in any event, considered that the public interest favoured disclosure.

5. The Authority notified the Applicant of the outcome of the review on 24 September 2025, which fully upheld its original decision.

6. On 27 September 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. They stated that they were dissatisfied with the outcome of the Authority's review for the same reasons as set out in their requirement for review.

Investigation

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

8. On 20 October 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.

[1] https://www.st-andrews.ac.uk/assets/university/about/documents/governance/court/independent-investigation-29-July-2024.pdf

9. 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 reasons for withholding the information requested.

Commissioner's analysis and findings

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

11. As stated in previous decisions, in Scottish Ministers v Scottish Information Commissioner [2006] CSIH 8[2], 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."

12. In this decision notice, the Commissioner has endeavoured to give as full 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 33(1)(b) – Commercial interests and the economy

13. Section 33(1)(b) of FOISA provides that information is exempt information if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority). This exemption is subject to the public interest test in section 2(1)(b) of FOISA.

14. There are several elements a Scottish public authority needs to demonstrate are present when relying on this exemption. It needs to establish:

    (i) whose commercial interests would (or would be likely to) be harmed by disclosure

    (ii) the nature of those commercial interests, and

    (iii) how those interests would (or would be likely to) be prejudiced substantially by disclosure.

15. The prejudice must be substantial, in other words of real and demonstrable significance. Where the authority considers that the commercial interests of a third party would (or would be likely to) be harmed, it must make this clear. Generally, while the final decision on disclosure will always be one for the authority, it will assist matters if the third party has been consulted on the elements referred to above.

The Authority's submissions

16. In addition to its own commercial interests, the Authority submitted that the following parties' commercial interests were of concern:

    - the KC who led the investigation and authored the investigation report

    - a sub-contractor for the KC which provided services as part of the investigation

[2] https://www.bailii.org/scot/cases/ScotCS/2008/CSIH_08.html

- Charlotte Stret Partners, the external firm engaged to provide communications support

17. The Authority explained that the commercial interests of the parties other than itself were the commercial trading activities they undertook (i.e. the ongoing sale of legal and professional services for the purpose of revenue generation within a competitive environment).

18. The Authority provided evidence to the Commissioner that it had consulted with Charlotte Street Partners during his investigation to obtain its views on disclosure of the withheld information. It confirmed that it did not consult with the KC. (It did not appear to have consulted with the KC's sub-contractor.)

19. The Authority noted that the KC was now a Senator at the Court of Session. However, it maintained that their commercial interests required protection as it was not unusual for Senators to step down from the bench and to resume commercial practice.

20. In terms of its own commercial interests, the Authority said that it operated in an extremely competitive national and international environment and that its ability to secure income from the domestic market was constrained by the funding model in place from the Scottish Funding Council (the SFC). It explained that its commercial interests were to trade for the purposes of revenue generation to fund its charitable objectives and to demonstrate, as part of its conditions of funding with the SFC, financial sustainability. As such, it required the ability to negotiate and secure, in confidence, reasonable discounts (where possible) for legal costs and other professional fees and it was incumbent on it to secure the best possible value for the public purse.

21. The Authority noted that it had already disclosed to the Applicant that it had received discounts for the services "central" to their information request. While it acknowledged that accurate extrapolation of the level of discount secured may not be possible, it considered that the nature of the discount would nevertheless be apparent to other professional service suppliers from the publicly available investigation report. It submitted that a similar assessment could be made, albeit to a lesser degree, for the work undertaken by Charlotte Street Partners.

22. The Authority therefore argued that disclosure of the withheld information would allow an estimation of the scale of the discounts obtained, which would threaten its ability to secure equivalent discounts in future and therefore its ability to control costs in a challenging financial environment.

23. The Authority also submitted that disclosure would be likely to significantly harm the commercial interests of the other parties as it would allow current and potential customers to learn of the scale of the discounts provided, thereby undermining their respective negotiating positions and harming trading activities central to their commercial interests.

24. The Authority noted that disclosure of the information requested would be likely, given the significant media attention to date on matters connected to the investigation into the Rector, to feature prominently in media articles and social media. It considered this would alert the public – and current and future clients of the other parties – to the scale of the discounts provided, resulting in an immediate impact on their negotiating positions and income generation.

The Applicant's submissions

25. The Applicant said that the Authority had applied the exemption in section 33(1)(b) of FOISA without providing clear evidence of how disclosure of "aggregated legal and consultancy

costs" would cause actual, significant harm. They stated that the Commissioner had consistently held that speculative or generic claims were not sufficient and that the Authority had not demonstrated any specific harm.

26. The Applicant noted that they did not request itemised invoices, rates, or contractual terms. Instead, they requested only high-level totals across categories (legal, PR, communications consultancy, and investigation). They argued that disclosure of these aggregated figures could not reasonably prejudice supplier interests or compromise future negotiations and said that the Authority had not explained otherwise.

The Commissioner's view

27. The Commissioner has carefully considered all the arguments submitted by both parties, along with the withheld information.

28. "Commercial interests" are not defined in FOISA, but the Commissioner's guidance[3] on the exemption in section 33(1)(b) states that an organisation's commercial interests will usually relate to the commercial trading activity they undertake.

29. To rely on this exemption, an authority must also evidence why disclosure would, or would be likely to, substantially prejudice the commercial interests of any person (including its own commercial interests).

30. The Commissioner cannot reveal the specific content of the withheld information. However, he can confirm that it is broken down to the level of the parties – it is not a further breakdown of specific tasks. Given the framing of the Applicant's request, the Commissioner is satisfied that this is a reasonable interpretation.

31. The Commissioner accepts that the Authority and, on balance, each of the parties (set out in paragraph 14) have commercial interests for the purposes of the exemption in section 33(1)(b) of FOISA.

32. However, the Commissioner must comment that he is less persuaded that the KC had such interests at the date of the review outcome given that they appeared by that time (and continue to be) restricted from undertaking work of the nature they undertook for the Authority by virtue of being a Senator of the College of Justice and it being unusual, in reality, for senior judges in Scotland to resign and revert to private practice.

33. In the circumstances, the Commissioner will nonetheless go on to consider the applicability of the exemption in section 33(1)(b) of FOISA to the Authority and each of the parties.

34. The Commissioner agrees that it is important to protect the Authority's finances and ability to obtain external assistance at best possible value (including through negotiation to secure discounts). He acknowledges that there may be circumstances where disclosing discounts secured by a public authority would, or would be likely to, to substantially prejudice the commercial interests of the Authority and/or other parties.

35. However, having carefully considered the withheld information, the Commissioner is not satisfied, based on the submissions provided by the Authority, that disclosure of this information would, either by itself or in combination with other information in the public domain, allow the scale of discounts provided by the parties to the Authority to be determined

[3] https://www.foi.scot/sites/default/files/2023-06/BriefingSection33CommercialInterestsandtheEconomy.pdf

with any accuracy. This is particularly so given that the withheld information is simply broken down to level the monies paid to the parties and no further.

36. The Commissioner notes the Authority's suggestion that a comparison between the KC's published report and the withheld information may allow the level of discount to be calculated. While the report does describe the work that went into it, he does not accept this description is sufficiently specific to allow to allow the scale of the discounts provided by either the KC or their subcontractor to be calculated. In this respect, he considers the Authority's argument to be unduly speculative.

37. The Authority did not suggest how the cost of the work undertaken by Charlotte Street Partners could be calculated from disclosure of the withheld information. The Commissioner considers it even less likely that disclosure would allow the scale of the discount provided by Charlotte Street Partners given the level of communications support they provided is less immediately quantifiable than the report published by the KC.

38. Taking account of the submissions received from the Authority in relation to the actual information being withheld in this case, the Commissioner is not satisfied that the Authority has evidenced the required substantial prejudice for section 33(1)(b) of FOISA to be engaged. Consequently, in this case, the Commissioner is not satisfied that the information requested was properly withheld under this exemption.

39. Having reached the above conclusion, the Commissioner is not required to consider the public interest test in section 2(1)(b) of FOISA. However, he will go on to consider whether the Authority was entitled to withhold the information in question under the exemption in section 30(c) of FOISA.

Section 30(c) – substantial prejudice to the effective conduct of public affairs

40. 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.

41. 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 applying 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.

42. 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: therefore, the authority 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.

The Authority's submissions

43. The Authority submitted that disclosure of the withheld information would limit its ability to conduct its business effectively, where it could not successfully:

- Enter and complete negotiation with suppliers to secure favourable commercial terms. Any loss of curtailment to minimise expenditure would mean that monies may have to found from other areas of the Authority's operations, resulting in negative impacts on the quality and continuation of services

- Secure preferred specialist external advice and/or representation. The potential impacts of this were likely to be considerable, should the Authority's ability to defend or pursue legal actions be diminished where the specialisms required were unavailable.

44. The Authority also indicated, in its initial response to the Applicant, that it considered there to be an expectation that rates charged by its suppliers would be held in confidence.

The Applicant's submissions

45. While the Authority asserted that disclosure of the withheld information would undermine its ability to negotiate with third parties, the Applicant said that the Authority had provide no evidence of this "beyond generalised assertions".

46. The Applicant stated that the Commissioner had repeatedly held that the exemption in section 30(c) required a "real, demonstrable risk of prejudice" and not speculative claims. They argued that the aggregated totals requested could not reveal negotiating strategies or specific commercial terms, meaning that withholding the information under the exemption in section 30(c) of FOISA was "unsupported".

The Commissioner's view

47. The Commissioner has carefully considered the submissions made by both parties, together with the withheld information.

48. As stated above, the Commissioner is not satisfied, based on the submissions provided by the Authority, that disclosure of the withheld information would, either by itself or in combination with other information in the public domain, allow the scale of discounts provided by the parties to the Authority to be determined with any accuracy. This is particularly so given that the withheld information is simply broken down to level the monies paid to the parties and no further.

49. In light of the above, the Commissioner is not satisfied that disclosure of the withheld information would, or would be likely to, substantially prejudice the Authority's ability to negotiate and secure discounts in future, or that disclosure would otherwise be likely to result in the harm required for the exemption in section 30(c) of FOISA to be engaged. Consequently, in this case, the Commissioner is not satisfied that the information requested was properly withheld under this exemption.

50. As he is not satisfied disclosure of the withheld information would be likely to reveal the scale of the discount provided, the Commissioner need not consider whether, in the circumstances of this case, the discounts provided were confidential.

51. As the Commissioner is not satisfied that the exemption in section 30(c) is applicable to the information, he is not required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA.

52. As the Commissioner has found that neither of the exemptions in sections 30(c) and 33(1)(b) of FOISA apply to the withheld information, he requires the Authority to disclose the information to the Applicant.

Decision

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

Specifically, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA by wrongly withholding the information requested under the exemptions in sections 30(c) and 33(1)(b) of FOISA.

The Commissioner therefore requires the Authority to disclose the wrongly withheld information, by **3 July 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

20 May 2026