



Scottish Information
Commissioner
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Decision Notice 187/2026

Minutes of Special Management Committee Meeting

Authority: Govan Housing Association Ltd
Case Ref: 202300977

Summary

The Applicant asked the Authority for minutes from Management Committee Meetings held in 2021. The Authority withheld the minutes of a Special Management Committee Meeting held on 4 March 2021. The Commissioner investigated and found that the Authority was not entitled to withhold the minutes of that meeting under the exemptions claimed. He required the Authority to disclose the minutes to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 36 (Confidentiality); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 30 July 2021, the Applicant made a request for information to the Authority. Among other things, he asked the Authority to provide him with copies of the minutes of all [Authority] Management Committee Meetings held in 2021.
2. The request set out in the preceding paragraph was titled request 4 in [Decision 140/2022](#)¹, which considered the Authority's handling of this request and other requests made by the Applicant on the same date. As the chronology of the Authority's handling of these requests is set out in Decision 140/2022, the Commissioner will not rehearse that same detail in this

¹ <https://www.foi.scot/sites/default/files/2022-12/Decision140-2022.pdf>

decision notice. The Commissioner's decision notice in this case is only considering request 4.

3. The Authority responded to the request on 12 August 2021.
4. On the same date, the Applicant wrote to the Authority requesting a review of its decision.
5. The Authority notified the Applicant of the outcome of its review on 19 August 2021.
6. On 2 September 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA, because he was dissatisfied with the outcome of the Authority's review.
7. As stated above, the Commissioner issued Decision 140/2022 in response to this application. In relation to request 4, Decision 140/2022 required the Authority to either disclose the further information held falling within the scope of the request or issue a response in terms of any relevant provision or exemption in FOISA.
8. The Authority notified the Applicant of its revised review response on 13 January 2023. In relation to request 4, the Authority disclosed the minutes of six meetings. However, it stated that it was "applying exemption 36, confidentiality of communications over legal and personal data" to withhold the minutes of a Special Management Committee Meeting held on 4 March 2021.
9. On 1 August 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's revised review, because he disagreed that the Authority was entitled to withhold the minutes of the Special Management Committee Meeting held on 4 March 2021. (The Commissioner exercised his discretion to accept the late application.)

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
11. On 27 September 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and its comments.
12. The case was subsequently allocated to an investigating officer.
13. As stated above, the Commissioner's decision notice in this case is restricted to considering whether the Authority was entitled to withhold the minutes of the Special Management Committee Meeting held on 4 March 2021.

Commissioner's analysis and findings

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

15. As noted above, the Authority stated that it was “applying Exception s36, confidentiality of communications over legal and personal data” to withhold the minutes of the Special Management Committee Meeting on 4 March 2021.
16. Section 36 of FOISA contains two separate exemptions. Information may be withheld if:
- (i) it is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings (for example, if information is “legally privileged”) (section 36(1)); or
 - (ii) the information was obtained by a Scottish public authority and disclosing it would constitute an actionable breach of confidence (section 36(2)). Section 36(2) incorporates the Scots law of confidence into FOISA.
17. As the Authority simply stated that it is relying on section 36 of FOISA, it is not clear which exemption the Authority is relying on or whether it is relying on both. While it appears unlikely that the Authority intended to rely on the exemption in section 36(1) of FOISA, the Commissioner will, in the circumstances, consider both exemptions.

Section 36(1) - Confidentiality

18. Section 36(1) of FOISA exempts from disclosure information in respect of which a claim of confidentiality of communications could be maintained in legal proceedings. Legal professional privilege can be split into two main types: legal advice privilege and litigation privilege.
19. In the revised review outcome, the Authority submitted that:
- Minutes of Special Management Committee Meetings were not published to members of the public, and sections 56 and 57 of the Authority’s [constitution](#)² outlined the rules on these meetings, with section 62 specifically outlining the requirement for minutes.
 - Its constitution did not provide that all minutes were available for publication. As such, it stated – verbatim – that: “It is thus the custom and practise of Govan HA not to publish minutes of special committee meetings as they tend to be on a confidential nature”.
20. In its comments to the Commissioner, the Authority confirmed that it had no further comment to add to the revised review outcome and reaffirmed that it was applying “Exception s36, confidentiality of communications over legal and personal data, relating to the release of special committee meeting minutes 4th March 2021”.
21. As stated above, the Commissioner considers it unlikely that the Authority intended to rely on the exemption in section 36(1) of FOISA. As the Authority has provided no evidence to support the application of the exemption in section 36(1) of FOISA, the Commissioner must find that this exemption does not apply.

Section 36(2) of FOISA - Confidentiality

22. Section 36(2) of FOISA provides that information is exempt if it was obtained by a Scottish public authority from another person (including another such authority) and its disclosure, by the authority so obtaining it, to the public (otherwise than under FOISA) would constitute a breach of confidence actionable by that person or any other person.

² <https://www.govanha.org.uk/wp-content/uploads/Association-Rules.pdf>

23. Section 36(2) is an absolute exemption and is not, therefore, subject to the public interest test in section 2(1)(b) of FOISA. However, it is generally accepted in common law that an obligation of confidence will not be enforced to restrain the disclosure of information which is necessary in the public interest.
24. Section 36(2) contains a two-stage test, both parts of which must be fulfilled before the exemption can be relied upon:
 - (i) The information must have been obtained by a Scottish public authority from another person.
 - (ii) Disclosure of the information by the public authority must constitute a breach of confidence by the person who gave the information to the public authority or by any other person.

The Commissioner's view

25. The extent of the Authority's submissions in this case on the application of the exemption in section 36 of FOISA, taken from both the revised review outcome and its comments to the Commissioner during his investigation, are set out in paragraphs 19 and 20 above.
26. It is apparent from these submissions that the Authority has made no attempt to justify the application of the exemption in section 36(2) of FOISA by reference to the relevant legal tests.
27. The Commissioner has nevertheless reviewed the sections of the Authority's constitution referred to by the Authority in paragraph 19. None of these sections state, or reasonably imply, that Special Management Committee Meetings are confidential or must not be disclosed. While it may be the custom and practice of the Authority not to publish the minutes of these meetings, that is not a sufficient argument, of itself, to engage the exemption in section 36(2) of FOISA (or any other exemption).
28. The Commissioner has also considered the content of the minutes of the Special Management Committee Meeting held on 4 March 2021. There is nothing to suggest that these were obtained by the Authority from another person: those present at the meeting are either employees of or members of the Authority and they appear to be discussing information wholly generated within, or by, the Authority.
29. Fundamentally, it is not for the Commissioner to make the case on behalf of the Authority. As the Authority has provided no evidence to support the application of the exemption in section 36(2) of FOISA, the Commissioner must find that this exemption does not apply.
30. Given that the Authority has not relied on any other exemptions in FOISA to withhold the minutes of the Special Management Committee Meeting held on 4 March 2021, the Commissioner requires the Authority to disclose these minutes in full (with the exception of the signature of the Chairperson) to the Applicant.

Handling matters

31. In the circumstances, the Commissioner must comment further on the Authority's handling of the request.
32. The Commissioner recently issued [Decision 155/2026](https://www.foi.scot/sites/default/files/2026-07/Decision155-2026.pdf)³ in relation to a separate request from the Applicant to the Authority for information relating to its Special Management Committee

³ <https://www.foi.scot/sites/default/files/2026-07/Decision155-2026.pdf>

Meetings. In that case, the Commissioner noted that, as it did in this case, the Authority referred to section 36 of FOISA but failed to specify which of the exemptions within that section it was applying.

33. The Commissioner would again strongly recommend that the Authority takes steps to address the shortcomings identified in Decision 155/2026 and in this decision notice as a priority, as set out in paragraph 146 of Decision 155/2026.

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 was not entitled to withhold the minutes of the Special Management Committee Meeting held on 4 March 2021 under the exemptions in section 36 of FOISA.

The Commissioner therefore requires the Authority to disclose the minutes of the Special Management Committee Meeting held on 4 March 2021 in full (with the exception of the signature of the Chairperson) to the Applicant, by 7 September 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

24 July 2026

