



Scottish Information
Commissioner
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Decision Notice 223/2026

Correspondence relating to Garelochhead Medical Centre

Authority: Highland Health Board
Case Ref: 202301321

Summary

The Applicant asked the Authority for correspondence relating to Garelochhead Medical Centre. The Authority withheld the information requested because it considered it to be commercially sensitive. The Commissioner investigated and found that the Authority was entitled to withhold some of the information but wrongly withheld other information. He required the Authority to disclose the wrongly withheld 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); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 2 August 2023, the Applicant made a request to the Authority. In relation to the period from 1 January 2022 to 31 July 2023, he asked for:
 - (i) “Copies of all emails/ letters/ correspondence etc between [the Authority] / Argyll & Bute Health & Social Care Partnership (HSCP) and Helensburgh GP practices relating to Garelochhead Medical Centre on the subject of the Helensburgh practice giving up management of the Garelochhead practice and passing it back to [the Authority] / HSPC to manage directly.
 - (ii) Copies of all emails/ letters/ correspondence etc between [the Authority] / Argyll & Bute Health & Social Care Partnership (HSCP) and Garelochhead Medical Centre on the

subject of the Helensburgh practice giving up management of the Garelochhead practice and passing it back to [the Authority] / HSPC to manage directly.

- (iii) Copies of all internal emails/ letters/ correspondence etc between [the Authority] / Argyll & Bute Health & Social Care Partnership (HSCP) officers relating to Garelochhead Medical Centre on the subject of the Helensburgh practice giving up management of the Garelochhead practice and passing it back to [the Authority] / HSPC to manage directly.
- (iv) Copies of all emails/ letters/ correspondence etc between [the Authority]/Argyll & Bute Health & Social Care Partnership (HSCP) and the Scottish Government or other bodies/ individuals not included in a, b, and c above relating to Garelochhead Medical Centre on the subject of the Helensburgh practice giving up management of the Garelochhead practice and passing it back to [the Authority] / HSPC to manage directly.”

2. The Authority responded on 22 August 2023. It withheld the information requested under section 33(1)(b) of FOISA.
3. Later the same 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 accept the bodies in question should be able to rely on their commercial interests to withhold the information requested.
4. The Authority notified the Applicant of the outcome of its review on 19 September 2023, which upheld its original decision.
5. On 24 October 2023, 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 reason set out in his requirement for review and because he considered that the public interest favoured disclosure of the information requested.

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 15 November 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.
8. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information
9. The case was subsequently allocated to an investigating officer.

Commissioner’s analysis and findings

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

Section 33(1)(b) – Commercial interests and the economy

11. 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.
12. 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;
 - (iii) and how those interests would (or would be likely to) be prejudiced substantially by disclosure.
13. 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 Applicant's submissions

14. The Applicant did not consider that the exemption in section 33(1)(b) of FOISA applied because the bodies to which his request referred were public bodies and therefore "commercial interests" should not have been a factor when considering the request.
15. The Applicant submitted that those registered with the Garelochhead Medical Centre should be entitled to know the details relating to the decision of the Helensburgh Practice to give up management of Garelochhead Medical Centre and pass it back to the Authority to manage directly.

The Authority's submissions

16. The Authority maintained that disclosure of the information requested would, or would be likely to, prejudice substantially the commercial interests of any person or organisation.
17. The Authority noted that the Applicant's suggestion that Garelochhead Medical Centre did not have commercial interests. However, it submitted that general practices were independent businesses which contracted with the NHS, rather than being directly employed by NHS Boards.
18. The Authority confirmed that Garelochhead Medical Centre's decision to end the contract was due, in part, to financial considerations. It explained that all contract holders across Scotland must manage the delivery of primary care within the "global sum" figure allocated to that practice by the Scottish Government. As independent businesses, they will cease to trade if they are not able to do this.
19. The Authority stated that there were serious and unprecedented financial sustainability issues across the general practice sector, resulting in an increasing number of contract terminations within general practice in Scotland
20. The Authority argued that it was important that general practices were able to engage Health Board managers in conversation around financial support and that they were able to share

concerns around sustainability. It considered that disclosure of these conversations would directly impact the market.

21. The Authority also commented that it was essential that it could have confidential and supportive conversations with general practice partners regarding their mental wellbeing and that it did not consider that such conversations, involving personal factors, should be disclosed to protect that confidential space.

The Commissioner's view

22. The Commissioner has carefully considered the submissions from both parties, together with the withheld information.
23. Section 33(1)(b) of FOISA clearly states that for the purposes of the exemption, a Scottish public authority is a person whose commercial interests can be protected under this exemption.
24. The Commissioner also recognises that there is often a strong public interest in protecting the commercial interests of Scottish public authorities: for example, in securing best value for taxpayer money and protecting the viability of services run on a commercial or semi commercial basis.
25. The Commissioner therefore cannot agree with the Applicant's view that the commercial interests of these bodies should not be considered when both bodies are Scottish public authorities.
26. While his [guidance](#)¹ on section 33 of FOISA notes that a financial interest is not necessarily a commercial one, the Commissioner recognises that these interests are often closely connected. As the withheld information relates to decision making around running Garelochhead Medical Centre on a commercial basis, the Commissioner accepts that the financial interests involved are commercial in nature.
27. The Authority did not explicitly identify whose commercial interests would, or would be likely to, be prejudiced substantially by disclosure of the withheld information. However, given the nature of the withheld information, the Commissioner is satisfied that both the Authority and Garelochhead Medical Centre have commercial interests in relation to the withheld information.
28. Having considered the submissions of both parties, and the withheld information, the Commissioner agrees that both the Authority and Garelochhead Medical Centre benefit from privacy of the channels through which they consider finances and change management.
29. In the circumstances, the Commissioner considers that disclosure of certain detailed information about the finances and viability of the medical practice in question would be likely to substantially prejudice the commercial interests of the Authority, the medical practice in question and other medical practices that may need to engage with the Authority under similar circumstances.
30. The Commissioner therefore finds that section 33(1)(b) of FOISA was engaged in relation to this information.

¹ [BriefingSection33CommercialInterestsandtheEconomy.pdf](#)

31. However, the Commissioner cannot agree that, by the time of the review outcome, the remaining withheld information was appropriately withheld under section 33(1)(b) of FOISA.
32. This remaining information does not consist of detailed information about finances or viability. In the circumstances, based on the submissions provided by the Authority, the Commissioner is not satisfied that disclosure of this information would, or would be likely to, result in the substantial prejudice required for section 33(1)(b) of FOISA to be engaged.
33. The Commissioner recognises that the Authority suggested that some of the conversations practices engaged in with Health Board managers involved personal factors, such as stress and retention. It is not apparent from the Authority's submissions whether it is referring to the withheld information in this case or to such conversations more generally. Nevertheless, the Commissioner is not satisfied, on the submissions provided, that the Authority has adequately demonstrated how these concerns relate either to its ability or the ability of Garelochhead Medical Centre to engage in commercial activity.
34. It is for the Authority to provide the required evidence of harm, not for the Commissioner to go out and find it or make the case on behalf of the Authority. Consequently, in this case, the Commissioner is not satisfied that the remaining withheld information was properly withheld under section 33(1)(b) of FOISA. Having reached that conclusion, the Commissioner is not required to consider the public interest test in section 2(1)(b) of FOISA.
35. However, as the Commissioner has found that the exemption in section 33(1)(b) of FOISA was correctly applied to some of the withheld information, he will now go on to consider the public interest test in section 2(1)(b) of FOISA in relation to that information and whether in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

The public interest test

The Applicant's submissions

36. The Applicant submitted that there is a clear public interest providing those registered with the Garelochhead Medical Centre with details relating to the decision of the Helensburgh Practice to give up management of the Garelochhead Practice and pass it back to the Authority to manage directly.
37. In particular, the Applicant argued that the public should know whether the decision was mainly based on financial considerations.

The Authority's submissions

38. The Authority acknowledged the general public interest in favour of disclosure of the information as it would further the public's understanding of key decisions which affect their lives or which have an effect on public health and safety. Broadly, it recognised that disclosure of information would serve the public interest if it would enhance accountability or prevent harm.
39. However, in this case, the Authority considered that the public interest would be better served by maintaining the exemption in section 33(1)(b) of FOISA.
40. In particular, the Authority submitted that the public interest would not be served by endangering the ability of practices to engage Health Board managers in conversations where they were able to share concerns around sustainability.

41. The Authority considered that disclosure would negatively impact its ability to support current practices and impact the likelihood of future contractors engaging with the Authority, which would negatively impact the market and therefore be contrary to the public interest.

The Commissioner's view

42. The Commissioner has carefully considered all of the arguments and facts in this case.
43. The Commissioner acknowledges the general public interest in transparency and accountability in the operations of public authorities.
44. More specifically, the Commissioner recognises the clear public interest in the public achieving a fuller understanding of the details relating to the decision of the Helensburgh Practice to give up management of Garelochhead Medical Centre and pass it back to the Authority to manage directly. He considers that disclosure of the information that he found was wrongly withheld under the exemption in section 33(1)(b) of FOISA would go some way to addressing this.
45. However, these factors must be weighed against the substantial public interest in protecting the ability of the Authority to have private discussions regarding services delivered commercially, particularly regarding the viability of services and change management.
46. As noted above, the Commissioner has already acknowledged the submissions made by the Authority in support of maintaining the exemption in section 33(1)(b) of FOISA, and he has already concluded that disclosure of the withheld information in question would, or would be likely to, prejudice the commercial interests of the Authority, Garelochhead Medical Centre and other medical practices that may need to engage with the Authority under similar circumstances.
47. Having balanced the public interest for and against disclosure, the Commissioner concludes that, in all the circumstances of the case, the public interest in maintaining the exemption in section 33(1)(b) outweighs that in disclosure of the withheld information under consideration here. In particular, he considers, on balance, that the public interest in disclosure is outweighed by the public interest in protecting a confidential channel for the Authority and medical practice to communicate commercial issues.
48. The Commissioner therefore finds that the Authority was entitled to apply section 33(1)(b) of FOISA, to the withheld information in question.

Next steps

49. As noted above, the Authority only relied on the exemption in section 33(1)(b) of FOISA to withhold the information requested. The Commissioner has found that the Authority was entitled to withhold some information under these exemptions, but not other information.
50. For the information the Commissioner has found the Authority was not entitled to withhold under these exemptions, he notes that it includes certain third-party personal data which appears, on its face, capable of being withheld as special category data under the exemption in section 38(1)(b) of FOISA, given that it relates to the health of identified or identifiable individuals.
51. In the circumstances, the Commissioner requires the Authority to disclose to the Applicant the information he has found to be wrongly withheld under the exemption in 33(1)(b) of FOISA, subject to the redaction of the health data of identifiable individuals. He will specify to the Authority the third-party personal data that he accepts can be redacted.

While, in this case, the Commissioner accepts that certain third-party personal data may be withheld under section 38(1)(b) of FOISA, notwithstanding the fact that the Authority did not rely on that exemption, responsibility rests with public authorities to identify and justify any exemption relied upon. The Commissioner reserves the right to require disclosure where no applicable exemption has been properly applied.

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 some information under section 33(1) of FOISA, the Authority complied with Part 1.

However, by incorrectly withholding other information under section 33(1) the Authority failed to comply with part 1, and in particular section 1(1).

The Commissioner therefore requires the Authority to disclose the incorrectly withheld information, by **22 October 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

7 September 2026