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Commissioner  
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# Decision Notice 241/2026

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## Introduction of 35-hour working week: notes of negotiated position.

Authority: Aberdeen City Council  
Case Ref: 202501320

### Summary

The Applicant asked the Authority for information relating to a “negotiated position” between the Authority and its recognised Trade Unions regarding the 35-hour week. The Authority withheld the information on grounds that disclosure would be likely to prejudice substantially the effective conduct of public affairs. The Commissioner investigated and found that the information was exempt from disclosure, and the Authority was entitled to withhold it.

### 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) (Prejudice to effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner).

### Background

1. On 19 May 2026, the Applicant made a request for information to the Authority. She asked for information, including electronic communications which alone or collectively formed the “negotiated position” between the Authority and the Authority’s recognised Trade Unions which formed the “agreement” for a 35-hour working week.
2. The Authority responded on 17 June 2025. The Authority withheld all of the information captured by the request under section 30(b) and (c) of FOISA on the grounds that disclosing the information would prejudice the effective conduct of public affairs.

3. On 17 June 2025 the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because she did not agree that the exemptions applied. She did not accept that the effective conduct of public affairs would be prejudiced by disclosure, and she argued that disclosure would better help the public understand how decisions were reached. The Applicant stated that any sensitive data could be redacted.
4. The Authority notified the Applicant of the outcome of its review on 6 August 2025. The Authority upheld its response in full.
5. On 6 August 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Authority's review because she did not agree that the exemptions applied.

## **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 6 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. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information.
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. These related to the searches for information carried out by the Authority and its reasons for withholding the information.

## **Commissioner's analysis and findings**

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

### ***Withheld information***

10. The Authority is withholding 14 documents in total, all of which have been withheld under sections 30(b)(ii) and 30(c) of FOISA.

### ***Section 30(c) – Prejudice to the conduct of public affairs***

11. 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." The use of 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 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. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
12. For the exemption in section 30(c) to apply, the prejudice caused by disclosure 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.

*The Authority's comments on the exemption*

13. The Authority submitted that disclosure of the withheld information would be likely to limit its ability to conduct its business effectively, because the information recorded the substance of sensitive negotiations between itself and its recognised Trade Unions on a significant staffing matter. It noted that this staffing matter related to a significant proportion of its workforce, with direct implications for employees' terms and conditions. It argued that the affected activity was not limited to the concluded 35-hour working week discussions themselves but extended to its wider ability to manage industrial relations, consult meaningfully on workforce change and negotiate effectively on future workforce change matters.
14. In practical terms, the Authority argued that disclosure would be likely to make future negotiations more guarded, more positional, and less constructive. It argued that if the information were to be disclosed, participants would be less willing to test options candidly, acknowledge areas of flexibility, or explore possible compromises if they considered that the detailed record of those exchanges might later enter the public domain. Consequently, this would reduce the Authority's ability to resolve difficult staffing issues through frank engagement and negotiated agreement, and would increase the risk of more entrenched positions, longer disputes, and less effective consultation outcomes.
15. The Authority also argued that disclosure would set a precedent for future consultations and negotiations on workforce matters by creating an expectation that the detailed content of negotiating exchanges may be disclosed after the event. It submitted that in a recurring industrial relations environment, precedent would be likely to influence behaviour well beyond this particular case, affecting future discussions on pay, working patterns, restructures, service redesign, and other sensitive employment matters.
16. The Authority submitted that the likelihood of the harm occurring was real and significant, rather than remote or speculative. It noted that the withheld information recorded detailed negotiating exchanges on a sensitive staffing matter between itself and its recognised Trade Unions. Disclosure of this information would reveal how positions were presented, challenged, and adjusted during the discussions. It commented that disclosure of the information would be likely to influence how similar exchanges were conducted in the future.
17. The Authority also argued that it was reasonably likely that participants would react to disclosure by becoming more guarded in the way they communicated, less willing to test possible concessions openly, and more cautious about expressing candid views in recorded discussions. It submitted that the resulting harm would be likely to arise through a reduction in candour, flexibility, and trust within future negotiations, with a corresponding impact on the Authority's ability to manage those matters effectively.
18. Furthermore, the Authority considered that these risks would arise immediately after disclosure and would not be confined to a short period thereafter. The immediate effect would be that both management representatives and Trade Union representatives would know that detailed records of their negotiating exchanges on sensitive workforce matters might later be disclosed.

It argued that awareness of this would be likely to influence behaviour from the next comparable discussion onward (if its trade union colleagues would be willing to engage at all).

19. The Authority submitted that this harm would be capable of persisting over the medium to longer term, because industrial relations and staffing negotiations were not isolated events: they could arise again between the same parties on issues such as working patterns, restructures, pay related matters, service redesign and other terms and conditions of employment. In that context, the Authority argued that prejudice was not tied only to the 35-hour working week negotiations themselves, but to the precedent disclosure would set for future discussions of a similar nature. For these reasons, the Authority considered that the likelihood of harm was sufficiently serious to meet the threshold of section 30(c).
20. The Authority commented that the sensitivity of the information had not diminished to the point where disclosure would be harmless. Although the specific 35-hour working week negotiations had concluded, the withheld information would reveal the parties' negotiating positions, areas of disagreement, and the manner in which proposals were advanced, resisted and tested. It argued that as long as disclosure was likely to inform or influence expectations about how comparable negotiations were conducted, it would set a precedent for the release of detailed negotiating records in that environment, therefore, the sensitivity could not be regarded as spent.

*The Applicant's comments on the exemption*

21. The Applicant did not agree that the exemption applied. She suggested that the Authority had misunderstood the nature of the information requested and reiterated that she was not seeking confidential negotiating discussions, internal advice or draft positions, rather the final negotiated position agreed between the Authority and the recognised Trade Unions.
22. The Applicant stated that the formal consultation with employees had concluded, and she noted that any document recording the agreed position would have been created after the decision-making process had finished. She argued that as the requested documents were the product of the decision-making process, disclosure of the information could not, therefore, inhibit the decision-making process.
23. The Applicant disputed the Authority's contention that disclosure would undermine future industrial relations, arguing that publication of an agreed position would instead demonstrate successful cooperation between the Authority and Trade Unions.

*The Commissioner's view on section 30(c)*

24. The Commissioner has carefully considered all of the submissions made by the Applicant and the Authority, together with the withheld information.
25. The information in question was collected as part of formal consultations with Trade Unions in relation to the discussions to adopt a 35-hour working week. The information contains the candid views and opinions of Authority employees and Trade Union representatives, including proposals, counterproposals, challenges and an active process of discussion.
26. The Commissioner acknowledges the Applicant's view that, at the time of her requirement for review, all of the discussions had concluded, and the negotiated position had become the Collectively Bargained position, which the Authority was implementing in full.

He has also considered her arguments in favour of transparency and accountability, recognising that disclosure of the Authority's discussions with Trade Unions would help the public better understand how the decision (to implement the 35-hour working week) was made.

27. However, the Commissioner is persuaded by the overall position of the Authority, that disclosure of the information would substantially prejudice the effective conduct of public affairs, by negatively impacting on its ability to negotiate with Trade Unions on issues of employment matters in the future. In the Commissioner's view, the arguments tabled by the Authority do justify the lawful application of this exemption.
28. The Commissioner is satisfied that the withheld information contains candid negotiation material and views exchanged by both parties, and that its disclosure would have a bearing on future negotiations and the reasonable expectation that, generally, negotiation records and discussions (between the Authority and its Trade Unions) will remain private.
29. The Commissioner is satisfied that the information consists of detailed trade union negotiation records rather than simply a discrete, separable final agreement, and that disclosure would be likely to prejudice future industrial-relations negotiations by reducing candour and trust, which would impact the Authority's ability to resolve difficult staffing and employment issues.
30. Furthermore, he accepts that the sensitivity of the information has not expired merely because the 35-hour week negotiations had concluded. He notes that the Authority and the Trade Unions remain in an ongoing industrial relationship, and they continue to engage with one another on workforce matters affecting employee's terms and conditions. Given this, he considers that the positions and views expressed by each party in the documents, continue to have sensitivity and he is satisfied their disclosure would result in real harm to the working relationship between the Authority and the Trade Unions. If this occurred, it would substantially prejudice the Authority's ability to exercise its statutory obligations of consultation and/or collective bargaining with the Trade Unions.
31. Having considered the competing arguments the Commissioner is satisfied that the exemption in section 30(c) of FOISA is engaged.

#### ***The public interest test - section 30(c)***

32. The public interest is not defined in FOISA but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

#### ***The Authority's comments on the public interest***

33. The Authority recognised that there was a genuine public interest in the disclosure of information relating to how significant workforce decisions were developed and agreed. It acknowledged that placing such information into the public domain could promote openness and transparency, assist public understanding of how an authority had approached a matter of importance, and allow greater external scrutiny of decision-making, including the extent to which competing interests were considered and how and eventual outcome was reached.

34. However, the Authority submitted that the information in this case was particularly sensitive because it did not simply reveal the fact that discussions took place or the broad subject matter under consideration, it recorded the detail of negotiating exchanges between itself and the Trade Unions. The Authority reiterated its view that disclosure in this case would make future negotiations more guarded, more positional and less constructive. The Authority argued that the consequences of disclosure would extend beyond this specific dispute and affect future negotiations on pay, working patterns, restructures and otherwise service redesign and terms and conditions.
35. The Authority argued that if disclosure took place, future participants (in Trade Union/Authority meetings) would be likely to alter their behaviour in a material way, even if they continued to act professionally. The Authority stressed that it did not believe that management representatives or Trade Union representatives would stop attending meetings or refuse to communicate or abandon professional standards if the information were to be disclosed. Rather, it considered the more likely change would be that such representatives would be more cautious about how they openly articulated negotiating positions, respond to challenge, acknowledge areas of flexibility or test possible concessions in recorded discussions.
36. In practical terms, the Authority argued that this change would mean that future negotiations were more likely to proceed on the basis of carefully framed, formal positions and less likely to involve the degree of exploratory, candid exchange that could assist parties to narrow differences and identify workable compromise. The Authority argued that the effects of disclosure would not be a simple continuation of current practices with greater awareness of transparency, but a shift in how participants used the consultation process and the negotiating space itself. If this occurred, the Authority argued that it would make future negotiations more rigid and less informative, reducing the ability of the parties to understand where movement might be possible and making it hard to resolve difficult staffing issues through constructive dialogue.
37. In the Authority's view, this was a real and foreseeable consequence of disclosure in this context, particularly given that the same parties are likely to engage again on sensitive workforce matters and would be aware that the detailed content of their exchanges may later enter the public domain.
38. The Authority submitted that the arguments in favour of transparency were reduced in this case by the nature of the information actually withheld. It stated that the issue was not whether there should be openness about the existence of the negotiations or the fact that a negotiated position was reached, but whether the detailed record of candid negotiating exchanges should be disclosed into the public domain.
39. It argued that disclosure of that level of detail would be likely to undermine the candour and effectiveness of future workforce related consultation and negotiation exercises, with consequential effects on trust, employee morale and engagement. For that reason, it argued that while transparency had been afforded significant weight, the Authority's position was that it was ultimately outweighed by the stronger public interest in preserving the ability to conduct sensitive workforce negotiations effectively and in the public interest.

### *The Applicant's comments on the public interest*

40. The Applicant advanced several public interest factors favouring disclosure, notably that the release of the information would allow the public to understand how the Authority reached its decision, how negotiations influenced the outcome of the dispute, the impact on public service delivery resulting from reduced working hours in this case and the overall basis for changing employees' terms and conditions.
41. The Applicant placed emphasis on the fact that the 35-hour week affected a large workforce and potentially affected public expenditure and resource allocation, accordingly the Applicant believed there was a strong public interest in understanding exactly what had been agreed by the parties.
42. The Applicant levied the argument that a collective bargained outcome still binds employees who are not trade union members, and that employees in that category also had a legitimate interest in seeing the negotiated position that was being implemented. The Applicant further argued that the public interest in this case favoured disclosure as it would improve trust, understanding and accountability without causing any corresponding harm.
43. The Applicant reiterated that the consultation had ended, an agreement had been reached, and implementation of the new policy had commenced. The Applicant therefore argued that there as little to no remaining public interest in "secrecy".

### *The Commissioner's view on the public interest*

44. The Commissioner acknowledges there is a substantial public interest in disclosure in this case as the request concerns a major workforce change, with implications for public service delivery, and the 35-hour week affects a large number of Authority employees. The arguments in favour of transparency are strong.
45. He also acknowledges that there may be occasions where particular withheld information might, for a variety of reasons, be considered sensitive but where the nature of this withheld information nevertheless meant its disclosure was in the public interest. On the basis of the submissions and the nature of the withheld information, the Commissioner does not consider that to be the case in all the circumstances of this particular appeal.
46. On balance, the Commissioner is persuaded that there is a greater public interest in ensuring that a public body, such as the Authority, can engage with Trade Unions for the purpose of negotiating workforce and workplace terms and conditions in confidence, and without fearing that frank views and suggestions exchanged before the final negotiations are reached, will be disclosed into the public domain. He considers that it is in the public interest for both sides (Trade Unions and public authorities) to be similarly confident and competent in negotiating in good faith, and that remarks made during negotiations benefit from a reasonable level of privacy.
47. The Commissioner accepts that both parties would enter negotiations differently and with less freedom if they considered that comments or suggestions made in the effort to find compromise, but which were rejected, would be disclosed into the public domain thereafter.
48. Given this, the Commissioner is persuaded that future negotiations would suffer if detailed negotiating exchanges were released.

The Commissioner finds merit in the Authority's position that reduced candour, parties being more cautious, a reduction in the willingness to est compromises and general undermining of trust between the Authority and unions, would likely result if disclosure would occur. The Commissioner is also satisfied that these concerns are real, rather than merely speculative.

49. The Commissioner recognises the importance of effective industrial relations and sees the protection of collective bargaining and industrial relations processes as the strongest public interest factor favouring withholding the information. In the Commissioner's view, ensuring public authorities can maintain effective relationships with recognised trade unions and conduct meaningful negotiations on workforce matters in normal circumstances is in the public interest.
50. The Commissioner accepts that the issue at hand in this case is not limited to the 35-hour week, and as the Authority has repeatedly argued, similar negotiations will occur in the future regarding pay, restricting, working conditions and service redesign. The Commissioner is persuaded that disclosure of the withheld information would create a precedent which could affect future negotiations between the same Parties on recurring workforce matters.
51. Overall, while there is a significant public interest in transparency, for the reasons put forward by the Applicant, the Commissioner finds that there is a stronger public interest in maintaining effective industrial-relations negotiations and collective bargaining processes. The Commissioner therefore finds that the public interest favours maintaining the exemption at Section 30(c) FOISA in withholding this particular information from disclosure and, consequently, that the Authority complied with FOISA.
52. As the Commissioner is satisfied that the information was properly withheld under section 30(c) FOISA, he is not required to go on to consider the application of the exemption in section 30(b)(ii) FOISA.

## **Decision**

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

## **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**

**18 September 2026**