



Scottish Information
Commissioner
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Decision Notice 246/2026

Evidence regarding a named councillor's use of a printer

Authority: Commissioner for Ethical Standards in Public Life in Scotland
Case Ref: 202502204

Summary

The Applicant asked the Authority for information relating to a specified investigation into a named councillor. The Authority withheld the information requested as it considered disclosure would, or would be likely to, prejudice substantially its ability to ascertain whether a person is responsible for conduct which is improper. The Commissioner investigated and agreed that the information was exempt from disclosure.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions) 35(1)(g) and (2)(b) (Law enforcement); 47(1) and (2) (Application for decision by Commissioner).

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Ethical Standards Act) Introductory Text and sections 1 (Code of conduct for councillors) and 9 (Commissioner for Ethical Standards in Public Life in Scotland to investigate breaches of codes).

Background

1. On 5 August 2025 the Applicant made a request for information from the Authority. He asked for:

“... the unredacted e-mails of [a named councillor] in her submissions to the [Authority]? I only require details relative to the timeline element of the e-mails. Personal details and/or details of specific complaints can remain redacted.”
2. For context, the request was made in connection with a complaint made against the named councillor in connection with a complaint that she had misused a council printer.

3. The Authority responded on 11 August 2025. It withheld the information requested under sections 35(1)(g) (as read with section 35(2)(c)) and 38(1)(b) of FOISA.
4. On 29 August 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated he was dissatisfied with the decision because he did not agree the exemptions apply. He also indicated he was most interested in three dates that he specified as:
 - (i) The printing of the documents using the council's printer;
 - (ii) Submission of the named councillor's complaint to the SNP;
 - (iii) [...] The unredacted elements [of the named councillor's email] which confirm, or not, whether on 22 July 2024 an "urgent need to provide hard copy" actually existed for a complaint submitted a week later.
5. The Authority notified the Applicant of the outcome of its review on 7 October 2025, which upheld its original decision. However, it indicated that it wished to rely on section 35(1)(g) of FOISA (as read with section 35(2)(b) rather than section 35(2)(c)).
6. On 7 October 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he considered the withheld information was misleading and therefore should be disclosed.

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 5 January 2026, 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.
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 the context and content of the withheld information and its application of the exemptions claimed.

Commissioner's analysis and findings

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

Section 35 – Law enforcement

11. Under section 35(1)(g) of FOISA, information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the exercise by any public authority (as defined by the Freedom of Information Act 2000) or Scottish public authority (as defined by FOISA) of its functions for any of the purposes listed in section 35(2) of FOISA.
12. The Authority is a Scottish public authority as defined by FOISA (see Schedule 1 to FOISA).

13. The Authority argued that disclosure of the information requested would, or would be likely to, prejudice substantially the exercise of its functions for one of the purposes specified in section 35(2) of FOISA: namely, to ascertain whether a person is responsible for conduct which is improper (section 35(2)(b)).
14. Section 35(1)(g) is a qualified exemption, in that it is subject to the public interest test set out in section 2(1)(b) of FOISA. In addition, the exemption can only apply where substantial prejudice would, or would be likely to, occur as a result of disclosure of the information.
15. There is no definition in FOISA of what is deemed to be substantial prejudice, 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 and therefore 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.
16. The Commissioner must, therefore, consider three separate matters:
 - (i) Does the Authority have a function in relation to one or more of the purposes mentioned in section 35(2) of FOISA?
 - (ii) If it does, would disclosure of the information prejudice substantially, or be likely to prejudice substantially, the Authority's ability to exercise that function?
 - (iii) If such prejudice would, or would be likely to, occur, does the public interest in maintaining the exemption outweigh that in disclosure of the information?

Does the Authority have a function in relation to section 35(2)?

17. The Authority explained that section 9 of the Ethical Standards Act requires the Authority to investigate and report on alleged contraventions of the Code of Conduct for Councillors established under section 1 of the Ethical Standards Act.
18. The Authority noted that investigations into compliance with the Code of Conduct for Councillors is expressly listed by the [Commissioner's guidance on section 35 of FOISA](#)¹ as an example of an investigation covered by section 35(2)(b) of FOISA.
19. In view of the above, the Commissioner is satisfied that the Authority exercises a function which relates to the purpose described in section 35(2)(b) of FOISA.

Would disclosure cause, or be likely to cause, substantial prejudice?

20. The Commissioner must now consider whether disclosure of the information would have been likely to prejudice substantially the exercise of the functions identified by the Authority.

The Applicant's submissions

21. The Applicant explained that he accepted the Authority's premise that the confidentiality of evidence provided by witnesses and respondents evidence must be maintained.
22. However, the Applicant indicated that he believed the named councillor had provided misleading information to the Authority. He contended that misleading information did not merit the protection that an exemption would normally provide, and that there would be a public interest in exposing any such misleading information.

¹ <https://www.foi.scot/sites/default/files/2022-04/BriefingSection35LawEnforcement.pdf>

The Authority's submissions

23. The Authority explained that it had received a request for these documents to be kept confidential and provided reasons for this request. After considering the complaint and evidence, it agreed to the request for confidentiality.
24. The Authority argued that it was likely that in many instances a participant would feel reluctant to meaningfully engage in an investigation process if they knew that evidence provided in confidence, including information such as this that the Authority had expressly agreed to keep confidential, was to be released.
25. The Authority submitted that fear of participating in a meaningful way would undermine the aim of the Ethical Standards Act to "establish a framework for securing the observance of high standards of conduct by councillors and other persons holding public appointments".
26. The Authority considered that disclosure of the withheld information would seriously affect how it was able to operate in the future and that the exemption in section 35(1)(g) of FOISA (as read with section 35(2)(b)) applied because disclosure would substantially prejudice its ability to investigate complaints about improper conduct.

The Commissioner's view

27. The Commissioner has carefully considered the submissions from both parties, together with the withheld information.
28. The fact that the Authority agreed to keep the information requested confidential does not, of itself, establish the substantial prejudice required to engage the exemption in section 35(1)(g) of FOISA. The question is whether disclosure of the information would, or would be likely to, prejudice substantially the Authority's ability to ascertain whether a person is responsible for conduct which is improper.
29. Disclosure under FOISA is disclosure to the world at large, not just to the Applicant. The Commissioner agrees with the Authority that the disclosure of information gathered as part of its investigations, especially where there is a clear expectation of confidentiality, would generally be likely to undermine confidence in the Authority's investigations and its handling of information obtained during investigations. This, in turn, could make complainers, respondents and witnesses less willing to engage fully and constructively with the Authority's investigations.
30. The Commissioner had considered the fact that the Authority possesses statutory powers, under the Ethical Standards Act, to compel the production of evidence. However, he is not persuaded that these powers reduce the prejudice claimed by the Authority to the extent that the exemption in section 35(1)(g) of FOISA does not apply.
31. The Commissioner considers that effective investigations benefit from the voluntary cooperation of individuals in order to obtain full, frank and best evidence. In his view, disclosure of the withheld information would be likely to substantially inhibit the Authority's ability to ingather full evidence which, in turn, would be likely to substantially prejudice the Authority's ability to carry out investigations.
32. The Commissioner acknowledges that the Applicant, in his requirement for review, suggested that he was limiting the information requested to just the dates of emails. However, the Commissioner considers that dates can, in themselves, be significant to investigations of this sort. Indeed, this would appear to be why this information is of interest

to the Applicant. In the circumstances, the Commissioner is satisfied that even disclosure of the dates alone would, or would be likely to, lead to the prejudice claimed by the Authority.

33. The Commissioner's remit is limited to considering whether the Authority complied with FOI law in responding to the Applicant's request. He has therefore not taken a view on whether the withheld information, or any part of it, is actually misleading.
34. The Commissioner recognises that sometimes investigations must consider misleading material, including to evaluate whether this material is in fact misleading. He therefore considers that, even if the material was misleading, disclosure of this material would still be likely to inhibit the sharing of information with the Authority for the purposes of its investigations.
35. In all of the circumstances, the Commissioner considers that the prejudice that the Authority has claimed would be likely to result from disclosure of the withheld information is real, foreseeable and of sufficient significance to engage the exemption in section 35(1)(g) of FOISA.
36. The Commissioner is satisfied that disclosure of the information would have prejudiced substantially, or would have been likely to prejudice substantially, the exercise of the Authority's functions for the purpose mentioned in section 35(2)(b) of FOISA. Consequently, he finds that the information is exempt from disclosure in terms of section 35(1)(g) of FOISA.

Does the public interest in maintaining the exemption outweigh that in disclosure of the information?

37. The exemption in section 35(1)(g) is subject to the public interest test required by section 2(1)(b) of FOISA. This means that, even although the Commissioner is satisfied that the disclosure of the information would, or would be likely to, prejudice substantially the exercise by the Authority of its functions in terms of section 35(1)(g) of FOISA, he must still order the information to be disclosed unless he is satisfied that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.

The Applicant's submissions

38. The Applicant considered that, where there is a suspicion of false information being submitted to the Authority, there is an unquestionable public interest in releasing this contested information.

The Authority's submissions

39. The Authority argued that the public interest was substantially met by its investigation and the deliberation of the Standards Commission, which decided it was not proportionate or in the public interest to take the matter further.
40. As a result, the Authority considered that it had already released sufficient information to serve the public interest.

The Commissioner's view

41. The Commissioner has carefully considered the submissions of both parties, together with the withheld information.
42. In general, the Commissioner recognises that there is a clear public interest in transparency and accountability of the Authority's investigations.

43. However, the Commissioner notes that the Standards Commission issued a [decision on the underlying complaint](#)² which observed the need to ensure that the ethical standards framework is not “brought into disrepute by spending public funds on administrative or legal processes in cases that did not, on balance, warrant such action.”
44. Having taken this into account, along with the circumstances of the case, the Standards Commission concluded that it was “not in the public interest or proportionate for it to hold a Hearing”.
45. The Commissioner also notes that the underlying complaint related to the printing of 27 pages at a rate of £0.0019 per page. Consequently, the alleged misuse of public funds amounted to around 5 pence.
46. Given the sum involved, and the Standard’s Commission’s decision, the Commissioner considers there is limited public interest in the information requested.
47. While the Commissioner notes the Applicant’s view that the information may be misleading, he is aware that this information in question has twice been considered by the Authority – during the investigation and in response to a subsequent complaint that was not accepted for investigation. The Authority clearly advised the Applicant that it had evaluated the material and had not found it to be misleading.
48. The Authority also sent a report to the Standards Commission that published the aforementioned decision not to hold a hearing. In this published decision, the Standards Commission did not express any concern about the material.
49. The Commissioner therefore is satisfied that this matter has been considered by the most relevant public authorities to the extent they consider appropriate. In the circumstances, the Commissioner does not accept that the Applicant’s suggestion that the material may be misleading substantially affects the public interest in disclosure. (As noted above, it is not necessary for the Commissioner to take a view whether the information is in fact misleading.)
50. The Commissioner considers that the publication of the Standards Commission’s decision, and the disclosure of a redacted investigation report to the complainer, substantially addresses the public interest in transparency of the Authority’s proceedings.
51. In all the circumstances of the case, the Commissioner finds that the limited remaining public interest in disclosure of the information is outweighed by the public interest in protecting the ability of the Authority to conduct its investigations with a necessary level of privacy.
52. Taking account of all the circumstances of this case, including the nature of the withheld information concerned, the Commissioner is satisfied that the public interest in maintaining the exemption outweighs that in disclosure. Consequently, he finds that the Authority was entitled to withhold the information in question under section 35(1)(g) of FOISA.
53. As the Commissioner is satisfied that the Authority was entitled to withhold the information in question under section 35(1)(g) of FOISA, he is not required to consider whether that information is also exempt from disclosure under section 38(1)(b).

² <https://www.standardscommissionscotland.org.uk/uploads/files/1751444121250702WrittenDecision.pdf>

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 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

21 September 2026