Scottish Information Commissioner
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Decision Notice 261/2026

Medical adviser whose clinical advice was relied upon in a decision on a complaint

Applicant: The Applicant
Authority: Scottish Public Services Ombudsman
Case Ref: 202600389

Summary

The Applicant asked the Authority for information regarding the medical adviser whose clinical advice the Authority relied upon in a decision it issued in response to a complaint he had made. The Authority stated that the information was exempt from disclosure. The Commissioner investigated and agreed.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (b) (Effect of exemptions); 26(a) (Prohibitions on disclosure); 30(c) (Prejudice to effective conduct of public affairs); 38(1)(b) (Personal information); 47(1) and (2) (Application for decision by Commissioner).

Scottish Public Services Ombudsman Act 2002 (the SPSO Act) section 12 (Investigation procedure); 19 (Confidentiality of information).

Background

1. On 5 January 2026, the Applicant made a request for information to the Authority in relation to a decision it had issued in response to a complaint he had made. He asked for clarification regarding the clinical advice relied upon in the decision and requested "confirmation of the following":

(i) The adviser's professional status and full name including registration details (e.g. GP, consultant),

(ii) Whether the adviser was currently practising at the time the advice was given,

(iii) The adviser's relevant experience in mental health, suicide risk assessment, and primary care safeguarding,

(iv) Confirmation that the adviser had no conflict of interest, including any connection to the [named Health Board] or the Practice,

(v) The specific questions or instructions put to the adviser by the Authority, and

(vi) Whether a full written statement was provided, beyond the summary included in the Statement of Reasons.

2. The Authority responded on 30 January 2026. It advised him that the information requested was exempt under section 26(a) of FOISA as it had been obtained in connection with a complaint and exempt under section 38(1)(b) on the basis that it was the adviser's personal data. However, it provided responses to the points raised in the request outwith FOISA because "it considered it appropriate to share information with complainants in terms of an adviser's suitability to provide advice on their complaint".

3. On 30 January 2026, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered the exemptions in sections 26(a) and 38(1)(b) of FOISA had been misapplied. However, he confirmed that he was "not seeking publication of the adviser's identity into the public domain".

4. The Authority notified the Applicant of the outcome of its review on 27 February 2026. It upheld its reliance on the exemptions in sections 26(a) and 38(1)(b) of FOISA and additionally relied on the exemption in section 30(c).

5. On 27 February 2026, 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 because of its reliance on the exemptions in sections 26(a), 38(1)(b) and 30(c) of FOISA.

6. The Applicant later clarified that, whilst he continued to question whether the Authority had correctly applied the exemptions in sections 30(c) and 38(1)(b) of FOISA, his principal concern was whether section 26(a) had been interpreted so broadly as to prevent disclosure of non-identifying recorded information which could properly 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 15 May 2026, the Authority was notified in writing that the Applicant had made a valid application. 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 its application of the exemption in section 26(a) of FOISA.

Commissioner's analysis and findings

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

Section 26(a) – Prohibitions on disclosure

11. Section 26(a) of FOISA exempts information from disclosure under FOISA, where disclosure of the information is prohibited by or under an enactment. This is an absolute exemption, in that it is not subject to the public interest test set down in section 2(1)(b) of FOISA.

12. In this case, the Authority argued that such a prohibition was created by sections 12[1] and 19[2] of the SPSO Act.

13. Section 19(1) of the SPSO Act provides that information obtained by the Authority, or any of the Authority's advisers, in connection with any matter in respect of which a complaint or request has been made, must not be disclosed except for a limited range of purposes specified elsewhere in section 19. These purposes do not include disclosure of information under FOISA.

The Applicant's submissions

14. The Applicant considered that the Authority had relied on section 26(a) of FOISA in relation to adviser-related information generally, rather than considering whether individual categories of non-identifying recorded information could be disclosed without contravening the relevant sections of the SPSO Act.

15. The Applicant acknowledged that the Authority was relying on section 19 of the SPSO Act, but he submitted that the existence of a statutory prohibition did not automatically determine that every document or every piece of recorded information connected with an adviser necessarily fell within that prohibition.

The Authority's submissions

16. The Authority confirmed that it wished to continue to rely on section 26(a) of FOISA in respect of the information requested, based on the prohibitions on disclosure contained in both sections 12 and 19 of the SPSO Act.

17. The Authority submitted that section 19 of the SPSO Act is a "very detailed confidentiality provision". The requirement for confidentiality is set down in section 19(1) of the SPSO Act on the basis that information obtained by the Authority in connection with any matter in respect of which a complaint or request has been made must not be disclosed, except for the purposes set out in section 19(2) or 19(3). The purposes set out at section 19(2) and 19(3) of the SPSO Act are not for the purpose of disclosing information into the public domain under FOISA.

18. The Authority stated that it had obtained the adviser's information because it needed independent GP advice on a complaint made to the Authority by the Applicant. The nature of the complaint also constituted information that it had obtained in connection with a matter in

[1] https://www.legislation.gov.uk/asp/2002/11/section/12

[2] https://www.legislation.gov.uk/asp/2002/11/section/19

respect of which a complaint had been made and that this could be deduced from the adviser's details.

19. The Authority highlighted that the Commissioner had accepted in previous decisions (e.g. Decision 016/2023[3]) that section 19(1) of the SPSO Act created a prohibition on the disclosure of information which engaged section 26(a) of FOISA in relation to information obtained by the Authority, including internally-generated information which drew heavily on information obtained by the Authority in connection with any matter in respect of which a complaint had been made.

20. The Authority submitted that the information requested, which it held in connection with the complaint made to it by the Applicant, was inextricably linked to that complaint and drew heavily on information it had obtained in connection with that complaint. It considered that it was unable to disclose the information requested under FOISA without disclosing information it had obtained in connection with the complaint concerned.

The Commissioner's view

21. The Commissioner has carefully considered all of the submissions from both the Applicant and the Authority, together with the terms of the request.

22. Having done so, the Commissioner is satisfied that the information requested concerns the adviser from whom the Authority obtained clinical advice in connection with the Applicant's complaint. In particular, it concerns information relating to the adviser's qualifications and experience, conflict information obtained in relation to the adviser's involvement in providing advice in response to the complaint, the information communicated to the adviser for the purposes of furnishing that advice and the advice or information subsequently furnished by the adviser.

23. Considering the above, the Commissioner accepts that the information requested is of a description covered by section 19(1) of the SPSO Act. That is, it is information obtained by the Authority in connection with a matter in respect of which a complaint has been made.

24. The Commissioner also accepts, as he has in a number of previous decisions, that section 19(1) of the SPSO Act creates a prohibition on the disclosure of information that engages section 26(a) of FOISA.

25. The Commissioner therefore accepts that the Authority was entitled to apply the exemption in section 26(a) of FOISA to withhold the information requested. In reaching this conclusion, he has not found it necessary to consider section 12 of the SPSO Act as well as section 19.

26. As noted above, the exemption in section 26(a) of FOISA is absolute and therefore the Commissioner is not required to consider the public interest test in relation to this information.

27. As the Commissioner has found that the information requested was correctly withheld under section 26(a) of FOISA, there is no requirement for him to also consider the application of sections 30(c) and 38(1)(b) of FOISA.

28. The Commissioner notes that the Applicant's request simply asked for "confirmation" in relation to several points regarding the adviser whose clinical advice the Authority relied upon in a decision in response to a complaint made by the Applicant. As stated in paragraph

[3] https://www.foi.scot/decision-162023

2 above, the Authority responded outwith FOISA to the points raised in the Applicant's request.

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.

Cal Richardson
Deputy Head of Enforcement

8 October 2026