



Scottish Information
Commissioner
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Decision Notice 227/2024

Teacher misconduct referrals – internal investigations guidance

Authority: General Teaching Council for Scotland
Case Ref: 202400273

Summary

The Applicant asked the Authority for information on how the Authority investigated reports of misconduct from members of the public. The Authority provided some information but withheld its internal investigations guidance under various exemptions in FOISA. The Commissioner investigated and found that the Authority was entitled to withhold some of the withheld information, but not entitled to withhold other information. The Commissioner 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); 30(b) and (c) (Prejudice to the effective conduct of public affairs); 35 (Law enforcement); 47(1) and (2) (Application for decision by Commissioner)

The Public Services Reform (General Teaching Council for Scotland) Order 2011 Articles 6(c) (General functions) and 18(3) (Fitness to teach)

Background

1. On 15 November 2023, the Applicant made a request for information to the Authority. The Applicant asked for “a copy of all information held by the [Authority] in relation to the guidelines related to investigating teacher misconduct referrals from members of the public.”

2. The Authority responded on 14 December 2023. The Authority provided some information to the Applicant, directed him to certain pages on its website that contained further information and withheld other information under the exemption in section 30(b)(ii) of FOISA.
3. On 17 December 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not agree that the exemption in section 30(b)(ii) of FOISA applied, noting that he had obtained comparable information from another authority and that disclosure of this information would help bring accountability and transparency to the sector.
4. The Authority notified the Applicant of the outcome of its review on 18 January 2024. The Authority upheld its response but applied further exemptions under FOISA to withhold the information requested. The Authority explained that it was now withholding the information requested under the exemptions in sections 30(b)(i), 30(b)(ii), 30(c), 35(1)(g), read in conjunction with 35(2)(b) and 35(2)(d)(ii), and 38(1)(b) of FOISA.
5. On 19 February 2024, 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 did not agree that the exemptions claimed applied and that the public interest favoured disclosure.

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 14 March 2024, 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 withheld information to the Commissioner, and the case was allocated to an investigating officer.
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, primarily related to the harm that the Authority considered would follow as a result of disclosure of the withheld information.

Commissioner's analysis and findings

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

The withheld information

10. The withheld information comprises:
 - Document 1 – a draft investigations guidance document, which contains several digital annotations
 - Document 2 – an embedded email chain within Document 1
11. The Authority withheld Document 2 and the digital annotations in Document 1 under the exemptions in sections 30(b)(i), 30(b)(ii) and 35(1)(g) of FOISA.

12. The Authority withheld the remainder of Document 1 under the exemptions in sections 30(c) and 35(1)(g) of FOISA.
13. The Authority also withheld a small amount of personal information under the exemption in section 38(1)(b) of FOISA. During the investigation, the Applicant confirmed that he did not require a decision on the information withheld under section 38(1)(b). The Commissioner will therefore not consider the application of section 38(1)(b) further in his decision.

Section 30(b)(ii) – substantial inhibition to free and frank exchange of views

14. Section 30(b)(ii) of FOISA provides that information is exempt information if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
15. In applying the exemption in section 30(b)(ii), the chief consideration is not whether the information constitutes opinion or views, but whether the disclosure of that information would, or would be likely to, inhibit substantially the free and frank exchange of views. The inhibition must be substantial and therefore of real and demonstrable significance.
16. Each request must be considered on a case-by-case basis, taking into account the effect (or likely effect) of disclosure of that particular information on the future exchange of views. The content of the withheld information will require to be considered, taking into account factors such as its nature, subject matter, manner of expression, and also whether the timing of disclosure would have any bearing. It is important to bear in mind that the exemption, where applicable, will apply to particular information and not inherently to a process (such as drafting).
17. As with other exemptions involving a similar test, the Commissioner expects authorities to demonstrate a real risk or likelihood that actual inhibition will occur at some time in the near future, not simply a remote or hypothetical possibility.

The Applicant's submissions about the exemption

18. The Applicant submitted that he had received comparable information from the Scottish Public Service Ombudsman, and it was not clear to him why different standards applied in this case.
19. The Applicant also submitted that the Authority is specifically required, by law, to be transparent. The Applicant explained that he did not consider the Authority refusing to disclose the information requested was compatible with this obligation.

The Authority's submissions about the exemption

20. The Authority stated that it must be able to develop internal guidance and procedure documents in the light of changes and evolving regulatory practice in a private space, so that it can continually develop, discuss, test and revise its guidance.
21. The Authority submitted that, if the comments made in this revision process were disclosed, its staff would be less free in expressing their views for fear that their comments may be taken out of context.
22. The Authority explained that as the comments were drawn from experience, including of live cases, disclosure of this information may give rise to legal risks. Even where legal risks would not arise, the fear of legal risks, were the information to be disclosed, would inhibit the willingness of staff to record these comments.

23. The Authority submitted that it operates in a transparent manner, as demonstrated by the substantial volume of information on its investigations it does publish and by the information it had signposted the Applicant towards.
24. The Authority explained that, while transparency is important, it must also consider the harm caused by disclosure. The Authority submitted that the public interest test in FOISA considers the value of transparency and strikes an effective balance between the competing demands for and against disclosure.

The Commissioner's view about the exemption

25. The Commissioner has taken account of all of the relevant submissions, together with the information that was withheld under section 30(b)(ii) of FOISA.
26. The Commissioner notes that the Applicant received information that he considered comparable from the Scottish Public Services Ombudsman. While disclosure by one Scottish public authority may suggest that disclosure of similar information by another will be possible, each request must be handled on its own merits.
27. Having reviewed the withheld information, the Commissioner is satisfied that the digital annotations to Document 1 question and, to some extent, test the draft investigations guidance.
28. The Commissioner agrees that the Authority must (in appropriate circumstances) have a private space to test and develop its guidance. He also accepts that disclosure of the digital annotations would undermine the expectation of privacy attached to those comments, which would be likely to result in the Authority's staff, aware that such comments were likely to be disclosed, being substantially more reluctant to comment on or to challenge the guidance.
29. As a result, the Commissioner is satisfied that disclosure of the information withheld under section 30(b)(ii) would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. He therefore finds that the digital annotations to Document 1 are exempt from disclosure under the exemption in section 30(b)(ii) of FOISA.
30. However, the Commissioner is not satisfied that this is the case for all of the emails within Document 2. This is because all but one of those emails outline an approach to certain technical matters, albeit in a discursive tone, rather than presenting any sort of challenge in any area of particular sensitivity.
31. The Commissioner agrees that disclosure of one of the emails within Document 2 (given its content, expression and, in particular, the level of detail) would, or would be likely to, result in the Authority's staff, aware that their comments are likely to be disclosed, becoming substantially more reluctant to address controversial topics or challenge the guidance.
32. For these reasons, the Commissioner is satisfied that only one of the emails within Document 2 is exempt from disclosure in terms of section 30(b)(ii) of FOISA. Given this conclusion, he is not required to go on to consider the public interest test in section 2(1)(b) in relation to the emails to which he has found the exemption in section 30(b)(ii) does not apply.
33. However, as the Commissioner is satisfied that the Authority was entitled to rely on the exemption in section 30(b)(ii) of FOISA to withhold the digital annotations to Document 1 and one email within Document 2, he is required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA for this information.

Public interest test – section 30(b)(ii)

34. As noted above, section 30(b)(ii) is subject to the public interest test required by section 2(1)(b) of FOISA. As the Commissioner has found that the exemption in section 30(b)(ii) was correctly applied to some of the withheld information, he is now required to consider 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.
35. The "public interest" is not defined in FOISA, but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest. The public interest does not mean "of interest to the public" but "in the interest of the public", i.e. disclosure must serve the interests of the public.

The Applicant's submissions on the public interest

36. The Applicant submitted that he considered the Authority was failing to comply with its governing legislation and its own published guidance. The Applicant argued that, given the Authority was not acting in accordance with its published guidance, its internal guidance must be published.
37. The Applicant explained that he was aware of failures by the Authority that he considered put children at risk and demonstrated systemic issues. The Applicant submitted that disclosure of the withheld information was necessary to facilitate a proper challenge to decisions of the Authority as the basis of the decision must be understood to inform such a challenge.

The Authority's submissions on the public interest

38. The Authority recognised the way in which it investigated serious concerns made about registered teachers could be described as "something which is of serious concern and benefit to the public", and not merely something of individual interest.
39. The Authority explained that was why it sought to make as much information available as it could, in order to improve accountability and transparency and to ensure public trust and confidence in teachers is maintained.
40. The Authority submitted that the use of digital annotations was an effective way to ensure that those using the draft guidance could see issues being raised and have access to free and frank explanations of matters arising. If disclosed into the public domain under FOISA, the Authority explained that this would reduce the likelihood of this approach being used going forward, which would not be in the public interest
41. In summary, the Authority concluded that the public interest favoured maintaining the exemption under section 30(b)(ii) in order to ensure that it is able to discuss, develop and update its internal guidance without fear of the substantial inhibition that would, or would be likely to, result from disclosure of the withheld information.

The Commissioner's view on the public interest

42. Again, the Commissioner has considered the submissions from both parties, together with the withheld information.
43. The Commissioner recognises that there is a public interest in transparency and accountability and scrutiny of decisions and decision-making processes of public authorities, particularly regarding child protection issues.

44. While there is a public interest in transparency of draft internal guidance used by the Authority, this must be balanced against the public interest in the Authority being able to hold internal discussions and debate in a private space, including to question and test guidance regarding child protection issues.
45. The Commissioner acknowledges that the ability of the Authority to do so, safe in the knowledge that information will not routinely be publicly disclosed, will be required on occasion, to allow open and frank exchanges to support informed decision-making. He accepts that the public interest does not lie in disclosing information that would limit such discussion in future.
46. On balance, therefore, the Commissioner finds that the public interest in disclosure of this information is outweighed by that in favour of maintaining the exemption in section 30(b)(ii) of FOISA.
47. Accordingly, the Commissioner has concluded that the Authority was entitled to withhold the information in terms of section 30(b)(ii) of FOISA.

Section 30(b)(i) – substantial inhibition to the provision of advice

48. As the Commissioner has accepted that the digital annotations to Document 1 and one email within Document 2 were correctly withheld under section 30(b)(ii) of FOISA, he will only consider the application of the exemption in section 30(b)(i) to the emails in Document 2 to which he found the exemption in section 30(b)(ii) did not apply.
49. Section 30(b)(i) provides that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
50. In applying the exemption in section 30(b)(i), the chief consideration is not whether the information constitutes advice, but whether the disclosure of that information would, or would be likely to, inhibit substantially the provision of advice.

The Applicant's submissions

51. The Applicant did not provide specific submissions on the applicability of the exemption in section 30(b)(i) of FOISA. However, the Applicant disagrees with its application. When considering this, the Commissioner will have regard to the submissions the Applicant has provided elsewhere, to the extent that they are relevant.

The Authority's submissions

52. The Authority submitted that if the information in question in Document 2 were disclosed, staff involved in the development over time of its policies would feel restrained in how they express advice of this nature and, without a private space to test, revise and correct their approaches, would be less likely to make similar suggestions in the future.
53. The Authority argued that this would be likely to create additional risks if the effect of the inhibition set out above resulted in its draft guidance becoming less detailed over time and therefore far less useful for its Regulatory Investigations team.
54. The Authority explained that the information in question is advice aimed at professionals who understand the interaction between employment law, criminal law and the Fitness to Teach process. The Authority noted that the advice reflected its professional regulatory perspective, which meant that issues of objective concern may not necessarily fall within its remit, and that the advice was largely expressed without judgement.

55. The Authority explained that the advice could therefore easily be misrepresented as not treating issues with the seriousness they deserve, and because it presupposes a degree of professional and background knowledge which members of the public will not necessarily possess.
56. For some of the information, the Authority also noted that it was possible that disclosing details of its investigations process could leave that process open to manipulation and undermine its ability to undertake investigations that are of key importance in it being able to perform its statutory functions (e.g. in relation to how evidence is gathered).

The Commissioner's view

57. Again, the Commissioner has taken account of all of the relevant submissions, together with the withheld information.
58. The Commissioner notes the Authority's concerns about misinterpretation of the information, were it disclosed. However, the Commissioner's [guidance on the public interest test](#)¹ is clear that if a public authority is concerned that information might not be easily understood, or would be misinterpreted, there is nothing to stop the authority from explaining the information.
59. While the Commissioner agrees that the Authority must (in appropriate circumstances) be able to privately discuss, test and develop its position, he does not accept that disclosure of the withheld information would, or would be likely to, inhibit substantially the free and frank provision of advice. This is because the information in question is not framed in a notably frank manner, and instead simply outlines, albeit in a discursive tone, approaches to certain technical matters.
60. The Commissioner is therefore not persuaded, from the submissions he has received and the content of the information itself, that disclosure of the information, withheld under section 30(b)(i) of FOISA, would result in the harm claimed by the Authority.
61. Given that the Commissioner does not accept the application of the exemption for the information withheld under section 30(b)(i), he is not required to consider the public interest in section 2(1)(b) for that information.

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

62. The Authority is withholding the main body of Document 1 under section 30(c) of FOISA.
63. 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". This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
64. 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 applying 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.
65. There is no definition of "substantial prejudice" in FOISA, 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

¹ <https://www.foi.scot/sites/default/files/2022-03/PublicInterestTestFOISA.pdf>

likely to, occur: therefore, the authority 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.

The Applicant's submissions

66. The Applicant did not provide specific submissions on the applicability of the exemption in section 30(c) of FOISA. However, the Applicant disagrees with its application. When considering this, the Commissioner will have regard to the submissions the Applicant has provided elsewhere.

The Authority's submissions

67. The Authority explained that Document 1 included factual information, and information on its internal processes, which was neither advice nor discussion. As a result, the Authority did not consider that either of the exemptions in section 30(b) of FOISA applied.
68. However, the Authority considered it essential that its staff continue to update its guidance to ensure that it reflected the experience of its staff. The Authority submitted that disclosing this information would lead to its staff being less willing to share and record their experiences. This, the Authority submitted, would lead to less helpful guidance developing over time.
69. The Authority explained that disclosing the guidance on its Fitness to Teach investigations could, in some instances, expose the process to manipulation and undermine the ability of the Authority to undertake investigations that are of key importance in it being able to perform its statutory functions (e.g. in relation to how evidence is gathered).
70. The Authority also expressed a concern that disclosure of the withheld information could provide what might be perceived as a "deeper insight" into how it arrived (or will arrive) at certain decisions. The Authority submitted that this could encourage parties to future Fitness to Teach cases to pre-empt the investigatory process and reach their own (incorrect) conclusions surrounding aspects of the case, which would potentially give rise to greater dissatisfaction should the outcome not be as expected.

The Commissioner's view

71. Again, the Commissioner has considered the submissions from both parties, together with the withheld information.
72. The Commissioner accepts that the Authority's guidance is informed by, and improved by, comments from its staff. However, the Commissioner notes that majority of the withheld information is factual, administrative or reflects a high-level and objective approach to cases.
73. While the Commissioner accepts that the Authority must (in appropriate circumstances) have a private space in which to consider and develop its internal advice, he is not persuaded that disclosure of this majority of the withheld information would prevent this from continuing in future.
74. Given the role of the Authority, and taking into account the public expectation that the its investigations are robust and lawful, the Commissioner considers that the majority of the information in Document 1 shows an objective approach being taken by the Authority in its approach to investigations and that some of the withheld information reflects or summarises information already published by the Authority. As such, the Commissioner considers that this information, if disclosed, would be unlikely to expose the Authority's investigations to a substantial risk of manipulation.

75. As rehearsed earlier, insofar as the information in question has the potential to be misunderstood or misrepresented, the Authority is free to provide explanatory material to offset this risk.
76. For these reasons, the Commissioner is satisfied that the majority of the information withheld from Document 1 is not exempt from disclosure in terms of section 30(c) of FOISA as he does not accept that disclosure of this information would, or would be likely to, prejudice substantially the effective conduct of public affairs (which is required to engage the exemption).
77. Given this conclusion, the Commissioner is not required to go on to consider the public interest test in section 2(1)(b) in relation to this information.
78. However, some of the withheld information discusses areas relating to the investigator's professional judgement on potentially contentious issues. The Commissioner agrees that, if this were disclosed, the Authority's staff would be likely to be inhibited from fully recording their experiences and considerations, substantially reducing the effectiveness of the guidance.
79. The Commissioner notes that some of the information discusses detailed approaches to the Authority's investigations. The Commissioner agrees that disclosing this material could allow individuals under investigation to prepare for and manipulate the Authority's investigative process.
80. The Commissioner is therefore satisfied that some of the information within Document 1 is exempt from disclosure in terms of section 30(c) of FOISA, as he accepts that disclosure of this information would, or would be likely to, prejudice substantially the effective conduct of public affairs.
81. As the Commissioner is satisfied that the Authority was entitled to rely on the exemption in section 30(c) of FOISA for some of the information withheld within Document 1, he is required to go on to consider the application of the public interest test in section 2(1)(b) for this information.

Public interest test – section 30(c)

82. As noted above, section 30(c) is subject to the public interest test required by section 2(1)(b) of FOISA. As the Commissioner has found that the exemption in section 30(c) was correctly applied to some of the withheld information, he is now required to consider 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 Applicant's submissions on the public interest

83. The Applicant's submissions on the public interest were set out earlier (at paragraphs 36 and 37). The Commissioner will not reproduce those submissions here but will fully consider them in what follows.

The Authority's submissions on the public interest

84. The Authority submitted that there is a significant public interest in understanding its fitness to teach process. However, it considered that there is a greater public interest in protecting its investigation, managing the risk of misinterpretation (especially by parties in specific cases) and ensuring its staff have up to date information, fully informed by the practical experiences of their colleagues.

85. The Authority also submitted that the public interest in understanding its fitness to teach process is largely met by the guidelines published on its website (and which it had signposted the Applicant to).

The Commissioner's view on the public interest

86. As set out earlier (at paragraph 58), the risk of misinterpretation should not be taken into account when carrying out the public interest test. Any such risks risk of misunderstanding would be more appropriately handled by providing an explanation, in terms of the authority's duty to provide advice and assistance.
87. The Commissioner accepts that there is a substantial public interest in understanding and scrutinising the Authority's processes, particularly with regard to child protection issues. He also agrees that disclosure of this guidance would assist in understanding and scrutinising the Fitness to Teach process.
88. However, the Commissioner considers that, in the circumstances of this case, there is a greater public interest in protecting the Authority's investigations from manipulation and ensuring its staff have access to investigation guidance informed by the experiences of their colleagues.
89. On balance, therefore, the Commissioner finds that the public interest in disclosure of this information is outweighed by that in favour of maintaining the exemption in section 30(c) of FOISA.
90. Accordingly, the Commissioner has concluded that the Authority was entitled to withhold the information in terms of section 30(c) of FOISA.

Section 35 (1)(g) – Law enforcement

91. The Authority withheld all of Document 1 and Document 2 under the exemption in section 35(1)(g) of FOISA. The Commissioner has already found that some material was correctly withheld under sections 30(b)(i), 30(b)(ii) and 30(c) and therefore will not consider this information again.
92. 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. (The Authority is a Scottish public authority as defined by FOISA.)
93. The Authority argued that disclosure of the information requested would, or would be likely to, prejudice substantially the exercise of its functions for two of the purposes specified in section 35(2):
- To ascertain whether a person is responsible for conduct which is improper (section 35(2)(b)); and
 - To ascertain a person's fitness or competence in relation to any profession or other activity which the person is, or seeks to become, authorised to carry on (section 35(2)(d)(ii)).
94. 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 the disclosure of the information.

95. There is no definition in FOISA of "substantial prejudice", but the Commissioner's view is that the harm in question must be of real and demonstrable significance. An 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.
96. The Commissioner must, therefore, consider three separate matters:
- Does the Authority have a function in relation to one or more of the purposes mentioned in section 35(2) of FOISA?
 - If it does, would disclosure of the information prejudice substantially, or be likely to prejudice substantially, the Authority's ability to exercise that function?
 - 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?

The Commissioner's view

97. Article 6(c) of The Public Services Reform (General Teaching Council for Scotland) Order 2011 (the 2011 Order) states that one of the Authority's general functions is "to investigate the fitness to teach of individuals who are, or who are seeking to be, registered". In addition, article 18(3) of the 2011 Order states that an individual shall be considered unfit to teach "if [the Authority] considers that the individual's conduct or professional competence falls significantly short of the standards expected of a registered teacher".
98. In view of the above, the Commissioner is satisfied that the Authority has a function in relation to section 35(2)(b) of FOISA.
99. The Authority submitted that disclosing information on approaches that are taken in relation to its investigations would interfere with its ability to carry out these investigations. The Authority also considered that information, were it disclosed, may be misinterpreted as a settled process for making decisions as opposed to a living document.
100. On the basis of this (misunderstood) information, the Authority explained that persons with an interest in a case being considered by the Authority may infer the potential outcomes based on this information. The Authority submitted that this would encourage parties to future investigations to pre-empt the investigatory process and to reach incorrect conclusions, which would be likely to disrupt its investigations.
101. As rehearsed earlier, the remaining withheld information is factual, administrative or reflects a high level and objective approach to cases. The Commissioner therefore does not accept that disclosure of this information would prejudice substantially, or be likely to prejudice substantially, the exercise of the Authority's functions for the purpose mentioned in section 35(2)(b) of FOISA.
102. Consequently, the Commissioner is satisfied that the information is exempt from disclosure in terms of section 35(1)(g) of FOISA. As he has found that the exemption in section 35(1)(g) of FOISA does not apply, the Commissioner is not required to go on to consider the public interest test.

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 sections 30(b)(ii) and 30(c) of FOISA, the Authority complied with Part 1.

However, by wrongly withholding information under sections 30(b)(i), 30(b)(ii), 30(c) and 35(1)(g) of FOISA, the Commissioner finds that Authority failed to comply with Part 1.

The Commissioner therefore requires the Authority to provide the information that was wrongly withheld by **Monday 2 December**.

The Commissioner will provide the Authority with a marked-up copy of the information in question showing the information which should be disclosed.

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

16 October 2024