



Scottish Information  
Commissioner  
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# Decision Notice 001/2025

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## First Minister's use of governmental cars during specified by-election

Authority: Scottish Ministers  
Case Ref: 202301584

### Summary

The Applicant asked the Authority to confirm whether the First Minister had used governmental cars for party political purposes during the 2023 Rutherglen and Hamilton West by-election. The Authority withheld the information on the grounds that disclosure would, or would be likely to, endanger the mental or physical health or the safety of the First Minister. The Commissioner investigated and found that the information had been wrongly withheld. He required the Authority to disclose the 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); 39(1) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner)

### Background

1. On 5 October 2023, a by-election took place in the parliamentary constituency of Rutherglen and Hamilton West.
2. On 6 October 2023, the Applicant made a request for information to the Authority. They asked for assurance that the then First Minister did not use chauffeur cars on the various visits he made to the Rutherglen election campaign for the SNP.

3. The Authority responded on 3 November 2023. The Authority explained that it was withholding the information requested under section 39(1) of FOISA on the grounds that disclosure would, or would be likely to, endanger the safety of the First Minister.
4. On 9 November 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because:
  - the information requested was historical and disclosure therefore posed no risk to the First Minister's safety
  - the First Minister's use of taxpayer funded cars for party political purposes was a matter of legitimate public interest.
5. The Authority notified the Applicant of the outcome of its review on 23 November 2023, which fully upheld its original decision.
6. On 25 January 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review because they disagreed with the Authority's application of the exemption under section 39(1) of FOISA and because they considered that the public interest favoured disclosure of the withheld information.

## 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 30 January 2024, 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. The Authority provided its comments.
9. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information.
10. The case was subsequently allocated to an investigating officer.

## Commissioner's analysis and findings

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

### ***Section 39(1) – Health, safety and the environment***

12. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual. This is a qualified exemption and is subject to the public interest test required by section 2(1)(b) of FOISA.
13. As the Commissioner notes in his [briefing on this exemption](https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment_2023.pdf)<sup>1</sup>, section 39(1) of FOISA does not contain the usual harm test. Instead of the "substantial prejudice" test found in many other harm-based exemptions in Part 2 of FOISA, this exemption refers to the

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<sup>1</sup> [https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment\\_2023.pdf](https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment_2023.pdf)

“endangerment” of health or safety. This test is less demanding than the “substantial prejudice” test.

#### *The Applicant’s submissions*

14. The Applicant considered that their request sought historical information and that there was therefore no risk to the security or health and safety of the First Minister.

#### *The Authority’s submissions*

15. Section 45 of FOISA makes it a criminal offence for the Commissioner or a member of his staff to disclose without lawful authority information which he has obtained, or which has been furnished to him, under or for the purposes of FOISA if the information is not at the time of the disclosure, and has not previously been, available to the public from another source.
16. The Commissioner is therefore unable to fully summarise the Authority’s submissions, within this decision notice, without breaching the obligation of confidentiality in section 45 of FOISA.
17. The Authority stated that it had sought advice from Police Scotland about the terms of the request in this case and noted that its approach in this case had been informed by that advice. It explained that general advice from Police Scotland held that details of the First Minister’s car journeys should not be published for security reasons.
18. The Authority noted that disclosure under FOISA was disclosure to the world at large. It argued that disclosure could have a “negative effect” and would allow the withheld information to be used and manipulated by those wishing to try to attack politicians, public figures and other protected establishments and individuals. Any increase in attacks on public figures would also present an increased risk to police officers and members of the public.
19. The Authority argued that the risk to the then First Minister, police officers and others was informed by Police Scotland’s threat assessment of a “serious and sustained threat from violent extremists”, which was greater in scale and ambition than any terrorist threats in the past.
20. The Authority stated that the risk resulting from disclosure of the withheld information was therefore real and not hypothetical. It gave examples of attacks in recent years on politicians in the UK.

#### *The Commissioner’s view*

21. The phrase “endanger” is broad enough to apply where there is a threat, direct or indirect, to the safety of a person. Since the exemption does not specify that any threat should be imminent before it applies, the threat may be either immediate, or one which would foreseeably arise in the future. The Commissioner believes that for endangerment to be considered likely, however, there must be some well-founded apprehension of danger, such that the prospect of harm could be regarded as a distinct possibility.
22. The Commissioner recognises that the Authority has raised serious concerns in relation to the safety of political and public figures (and, by extension, to those in close proximity to these figures) in the current climate. He has also taken into account the recent examples of attacks on politicians in the UK cited by the Authority in its submissions.
23. The central question when considering the application of the exemption in section 39(1) of FOISA in this case is whether disclosure under FOISA of the withheld information would, or would be likely to, endanger the physical or mental health or the safety of an individual.

24. In this case, the Applicant has not requested detailed information about the then First Minister's movements or their security profile. Instead, they have effectively sought a "yes" or "no" response to whether the First Minister travelled to Hamilton and Rutherglen during a specified by-election in a governmental car.
25. Having considered the withheld information and the submissions provided by the Authority, the Commissioner cannot accept that disclosure of the withheld information would, or would be likely to, add to the level of threat that the Authority has argued already exists.
26. For this reason, the Commissioner finds that disclosure would not be likely to endanger the physical or mental health or the safety of any person. He therefore finds that the exemption in section 39(1) of FOISA has been wrongly applied by the Authority.
27. Given that the exemption in section 39(1) of FOISA was wrongly applied, the Commissioner is not required to consider the public interest test in section 2(1)(b) in terms of section 39(1).

## Decision

The Commissioner finds that the Authority failed to comply 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 the Authority wrongly withheld the information requested under the exemption in section 39(1) of FOISA. By doing so, the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant, by **24 February 2025**.

## 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.

**David Hamilton**  
**Scottish Information Commissioner**

**8 January 2025**