



Scottish Information
Commissioner
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Decision Notice 049/2025

Information regarding a complaint

Authority: Scottish Public Services Ombudsman

Case Ref: 202401444

Summary

The Applicant asked the Authority for information relating to a complaint that had been made to the Authority. The Authority stated that the information was exempt from disclosure. The Commissioner agreed.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (2)(b) (Effect of exemptions); 26(a) (Prohibitions on disclosure); 47(1) and (2) (Application for decision by Commissioner)

Scottish Public Services Ombudsman Act 2002 (the SPSO Act) section 19 (Confidentiality of information)

Background

1. On 13 September 2024, the Applicant made a request for information to the Authority related to a complaint made to the Authority on behalf of her relative. Specifically, she requested that the Authority provide evidence of amoxicillin administration documentation as it was not in the medical records she had received.
2. The Authority responded on 18 September 2024. It informed the Applicant that it had no record of having provided copies medical records to her and advised her on how she might obtain such information by making an authorised subject access request (SAR) on behalf of her relative under the under the Data Protection Act 2018 (DPA 2018)/the United Kingdom

General Data Protection Regulation (UK GDPR). It also advised her that the information requested was exempt under section 26(a) of FOISA as it was obtained in connection with a complaint.

3. On 17 October 2024, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the Authority's decision to withhold the information requested under the exemption in section 26(a) of FOISA. (Her requirement for review also included a SAR under the DPA 2018/UK GDPR and a new request for information under FOISA – neither of which are considered further in this decision notice.)
4. The Authority notified the Applicant of the outcome of its review on 31 October 2024, which fully upheld its original decision.
5. On 1 November 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated that she was dissatisfied with the outcome of the Authority's review because she considered there was a public interest in disclosing information relating to "procedural transparency. She said her appeal sought a determination from the Commissioner on whether the exemption in section 26(a) of FOISA had been appropriately 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 28 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 question regarding its application of the exemption in section 26(a) of FOISA.
9. During the investigation, the Applicant raised concerns that fall outwith the remit of the Commissioner. He will therefore not consider these concerns in his decision notice. The Commissioner's remit extends only to whether the Authority complied with Part 1 of FOISA in responding to the Applicant's request dated 13 September 2024 (as set out in paragraph 1).

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. The Commissioner will firstly consider the Authority's application of section 26(a) of FOISA
12. 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. In this case, the Authority argued that such a prohibition was created by sections 12 and 19 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 a 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.
14. The Authority confirmed that the information requested had been obtained specifically as part of an investigation in connection with a complaint. In the circumstances, and given the nature of the request, the Commissioner accepts that this is information of a description covered by section 19(1) of the SPSO Act. He also accepts that section 19(1) creates a prohibition on the disclosure of information that engages section 26(a) of FOISA
15. 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.
16. The Commissioner notes that the Authority advised the Applicant how to make a SAR on behalf of her relative for the information requested in this case. He considers this was appropriate advice, and he notes that the Authority has now issued a SAR response to the Applicant which included a copy of the information requested in this case.

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.

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

24 February 2025