

Date 27/01/2026
Your Ref
Our Ref 10990

Enquiries to Richard Mutch
Extension 35687
Direct Line 0131 465 5687
loth.freedomofinformation@nhs.scot
richard.mutch@nhs.scot

Dear

FREEDOM OF INFORMATION REVIEW - APPRAISAL

I write in response to your request for review of NHS Lothian's response to your Freedom of Information request about staff appraisals. I can respond as follows:

Original Request and Response:

Question:

- The original letter was treated as normal business and not dealt with under the Freedom of Information (Scotland) Act 2002.

Answer:

The appraisal information itself is confidential and is not subject to freedom of information. You appear to be asking for information about a third party where there is an absolute exemption in terms of the Freedom of Information (Scotland) Act 2002 (FOI(S)A - Section 38(1)(b)), if the disclosure would breach any of the Data Protection Principles. Additionally, the information you have asked for is, I believe, exempt from provision under Section 30 of FOI(S)A - prejudice to effective conduct of public affairs

Review Request:

- Your refusal notice incorrectly asserts that (a) "the appraisal information is confidential and not subject to freedom of information." Secondly, in seeking to apply an absolute exemption pursuant to S38(1)(b) you fail to appreciate my legitimate interest in processing the third party personal data of Ms Mundwell. May I remind you that (b) your authority has previously been obliged to concede a FOI(S)A appeal in the Inner House of the Court of Sessions on an issue related to third party data of a nurse. In citing S30 (c) you do not explain why disclosure of information requested would meet the statutory test. It is clearly in the public interest that there can be confidence in GMC decisions and your authority can be relied upon to address properly ongoing issues of clinical concern such as those raised in relation to Ms Mundwells practice, particularly where this involves a vulnerable group such as prisoners, Your refusal notice (d)also fails to comply with FOI(S)A notification requirements.

Headquarters
Mainpoint
102 West Port
Edinburgh EH3 9DN

Chair Professor John Connaghan CBE
Chief Executive Professor Caroline Hiscox
Lothian NHS Board is the common name of Lothian Health Board

Review Response:

a.	We accept your legitimate interest in the information requested, however it is our view that the rights of the individual in relation to their appraisal information outweigh your interest and those of the public. Therefore Section 38(1)(b) applies. The information requested would also not be releasable under the Data Protection Act.
b.	We are not aware of any appeal to the Inner House of the Court of Sessions, so we cannot comment further on this
c.	In relation to Section 30, if NHS Lothian were to start releasing staff appraisals into the public domain this would seriously impact on the organisation's ability to review members of staff's performance and to function. There is an expectation of confidentiality around this process and without that our ability to carry out staff appraisals would not be viable.
d.	Your initial letter was not dealt with as an FOI as it was treated as normal business (although it did state exemptions for your information). Therefore, at that stage it did not contain contact details for the Reviewer/Review process or The Scottish Information Commissioner.

If you are not satisfied with this response you still have the right to make a formal complaint to the Scottish Information Commissioner who you can contact at the address below or using the Scottish Information Commissioner's Office online appeals service at <https://www.foi.scot/appeal>. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

Scottish Information Commissioner
 Kinburn Castle
 Doubledykes Road
 St Andrews, Fife
 KY16 9DS
 Telephone: 01334 464610
 Fax: 01334 464611
 e-mail: enquiries@foi.scot

Yours sincerely

**Freedom of Information Reviewer/
 NHS Lothian**
 cc: Executive Nurse Director