

Date 27/02/2026
Your Ref
Our Ref 11085 - 11095

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

Dear

FREEDOM OF INFORMATION – SUPREME COURT RULING

I write in response to your request for information in relation to the Supreme Court Ruling.

Question: 11085

- In terms of the Freedom of Information [Scotland] Act 2002, I write to ask for sight of all Board papers, emails and internal correspondence setting how NHS Lothian has responded to Ms Russell's letter of 30th September 2025, what legal advice the Board has taken, what actions the Board has planned to ensure compliance with the law, and what conclusions were reached on entering the risks around this issue and why it was not entered in the Corporate Risk Register.

Answer:

- A verbal update was provided at Staff Governance Committee on 15 December 2025. The draft minute is not yet approved and is due for publication within 12 weeks. NHS Lothian is relying on the exemption under s.27(1).
- 01/10/2025 email from Executive Director of People and Culture sharing copy of Letter from Director of Health Workforce to NHS Chief Executives – implementation of the Supreme Court Judgement – 30 Sept 2025

• NHS Lothian is relying on the exemptions in Section 36 and Section 30(b) of the Freedom of Information (Scotland) Act 2002 for the request for emails and internal correspondence about legal advice and planned actions to comply with the law that relate how NHS Lothian has responded to Ms Russell's letter.

It may be of assistance to refer to:

- The following published FOI response [Microsoft Word - 10258-Gender Identity - FOI July 2025 - 10258 \(002\)](#) which sets out actions that have already been taken and are ongoing.
- Although not a Board paper, email or internal correspondence, the attached Project Initiation Document for the Workplace Facilities Short Life Working Group sets out the agreed planned actions that are relevant to Ms Russell's letter.

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



No Board papers, emails or internal correspondence are held in relation to entering risks on the Corporate Risk Register around Ms Russell's letter.

It may be of assistance to refer to NHS Lothian's Risk Management Policy and Risk Management Operational Procedure and explain that existing controls are in place to reduce the risk to a level that does not warrant escalation onto the corporate risk register. Both documents are publicly available on our website following this link [Risk Management – Policy Online](#).

Question: 11095

1. Has the Board obtained their own legal advice on complying with the judgement and with all relevant legislation and regulations, all as set out in Ms Russell's letter of 30th September 2025?
2. If the answer to this is yes, can you please provide me with:
 - a. A copy of the legal advice obtained by the Board
 - b. The total cost to the Board of obtaining that advice
 - c. A copy of any planned actions, including timetables, the Board has drawn up based on the advice received and ensuring that the Board will be compliant, as an employer and as a service provider, with the judgement and with all relevant legislation and regulations
 - d. A note of the total costs anticipated to the Board of changes needed to policy and practice to ensure compliance with the judgement and with all relevant legislation and regulations
3. If the answer is no, can you provide me with a copy of the Board meeting minutes at which the Chief Executive reported receipt of Ms Russell's letter and an explanation as to why the Board has not sought the legal advice recommended by government?
4. In either scenario, has the Board flagged the reputational, financial and other risks associated with non-compliance with the judgement and with all relevant legislation and regulations, in the Board's Corporate Risk Register ?
5. If yes, can you please provide me with a copy of the Corporate Risk Register entry
6. If no, can you please provide me with a copy of papers, emails and any relevant correspondence associated with a decision not to include the matter in the Board's Corporate Risk Register.
7. Copies of any progress reports on all of the above made to Ms Russell providing the 'assurances on your work in this area' as flagged in her letter of 30th September 2025

Answer:

1.	Yes
2a.	NHS Lothian is relying on the exemption under s.36 of the Freedom of Information

	(Scotland) Act 2002.
2b.	£1,331.82.
2c.	Actions being taken forward under the oversight of NHS Lothian Workplace Facilities Short Life Working Group are included within the attached Project Initiation Document.
2d.	This information is not held.
3.	Not applicable.
4.	No.
5.	Not applicable.
6.	This information is not held. It may be of assistance to refer to NHS Lothian's Risk Management Policy and Risk Management Operational Procedure and explain that existing controls are in place to reduce the risk to a level that does not warrant escalation onto the corporate risk register. Both documents are publicly available on our website following this link Risk Management – Policy Online
7.	This information is not held.
In relation to 2d. and 7. As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise that we do not hold this information.	

I hope the information provided helps with your request.

If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner within 6 months of receipt of our review response. You can do this by using the Scottish Information Commissioner's Office online appeals service at www.itspublicknowledge.info/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.

If you require a review of our decision to be carried out, please write to the FOI Reviewer at the email address at the head of this letter. The review will be undertaken by a Reviewer who was not involved in the original decision-making process.



FOI responses (subject to redaction of personal information) may appear on NHS Lothian's Freedom of Information website at: <https://org.nhsllothian.scot/FOI/Pages/default.aspx>

Yours sincerely

ALISON MACDONALD
Executive Director, Nursing
Cc: Chief Executive