

Aberdeenshire Council
Freedom of Information (Scotland) Act 2002 ("The Act")
Decision Notice – Section 21(5)

Application by K. Forbes
Information Request: 43475

Dear Mr. Forbes,

In accordance with section 21(1) of the Act, the review panel of Aberdeenshire Council has considered your application for a requirement for review received on the 4th of July 2026.

In accordance with section 21(5) of the Act, the review panel herewith gives notice in writing that the decision notice complained about dated the 3rd of July 2026, required amendment

A statement of the reasons for the decision as required by section 21(5) of the Act is appended.

Application for a decision by the Scottish Information Commissioner:

By virtue of section 47 of the Act, a person who is dissatisfied with a decision notice issued under section 21(5) or (9) of the Act, may apply to the Scottish Information Commissioner for their decision as to whether, in any respect specified in that application, the request for information under section 1(1) of the Act, has been dealt with in accordance with Part 1 of the Act.

An application to the Scottish Information Commissioner must be made in writing (or in another form having some permanency e.g. a video / tape recording) within six months of receipt of a section 21 decision notice from Aberdeenshire Council's review panel. When applying to the Scottish Information Commissioner to make a decision with respect to a section 21 decision notice, you must state your name and address for correspondence.

You must also specify:

- (a) The request for information to which the requirement for review was made to Aberdeenshire Council relate.
- (b) The matter which gives rise to your dissatisfaction and your request for review; and
- (c) The matter which gives rise to your dissatisfaction pertaining to the decision given in the section 21 decision notice.

An appeal can now be made online at the following address:

<https://www.foi.scot/appeal>

Yours sincerely,

Clerk to the Review Panel

Aberdeenshire Council
6th August 2026

Further Information:

The Scottish Information Commissioner can be contact at: -

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St. Andrews
Fife
KY16 9DS

Telephone: 01334 464610
Fax: 01334 464611
Email: enquiries@itspublicknowledge.info
Web: <https://www.foi.scot/appeal>

Appeals against a decision of the Scottish Information Commissioner:

Section 56 of the Freedom of Information (Scotland) Act 2002 ("The Act") provides an appeal on a point of law may be made to the Court of Session.

- (a) Against a decision of the Scottish Information Commissioner (under subsection (2) of section 49 – i.e. where the Commissioner determines that a decision does not require to be made) by the person who applied to the Scottish Information Commissioner to make such a decision (i.e. an applicant);
- (b) Against a decision of the Scottish Information Commissioner (under subsection 3(b) of section 49) by an applicant or by the Scottish Public Authority in respect of which the decision was made; or
- (c) Against a decision which resulted in the giving of an information notice or an enforcement notice to a Scottish Public Authority.

Statement of Reasons – 43475

The Review Panel had before it the initial request, the service response, the request for review and further submissions from both the requester and the service.

The Review Panel noted that its role was to deal with requests for information under the Freedom of Information (Scotland) Act 2002. Its role is not to answer complaint type questions. Its role is not to facilitate production of documents – the entitlement under the Act is to seek information, not documents (*Glasgow City Council v Scottish Information Commissioner*, Inner House of the Court of Session, 2009).

The Review Panel noted that the further submission dated 21 July 2026 contained requests that were not part of the initial request. The Review Panel has forwarded this to the service with the request that it treat it as a new request or as part of an existing request for this information if this exists.

With regard to the headings in the submission of 10 July 2026 from the requester:

Financial Analysis and Decision Making

The Review Panel noted, per the paragraph above, that what was sought was documentation rather than information. The Review Panel also noted the scope of its remit and considered a number of the questions/comments from the requester fell outwith the remit of the Review Panel.

The service confirmed that the following information which was held had been provided to the applicant and that appropriate searches within their service had been conducted:

- All spreadsheets, calculations, financial models and cost estimates used in support of the recommendation to commence consultation on the closure of Banchory-Devenick School.

No additional information held other than previously provided in ECS report.

- Any documents showing projected revenue savings arising from closure.

Not held but will form part of the statutory consultation document which is in development.

- Any documents showing projected maintenance savings arising from closure.

No additional information held other than previously provided in ECS report.

- Any documents showing projected staffing savings arising from closure.

Not held.

- Any documents showing projected transport costs associated with closure.

Not held will form part of the statutory consultation document which is in development.

- Any documents comparing: retaining the school; repairing the school; relocating pupils; permanent closure.

No additional information held other than previously provided in ECS report.

Alternatives to Closure

The Review Panel noted, per the paragraph above, that what was sought was documentation rather than information. The Review Panel also noted the scope of its remit and considered a number of the questions / comments from the requester fell outwith the remit of the Review Panel.

The service confirmed that they hold the survey results however these have not yet been analysed, nor are they in a position to be shared in their current form (e.g. personal data throughout). The exemption under section 38(1)(b) of the 2002 Act would therefore apply to this information. This is an absolute exemption.

Further, the results require to be properly analysed as part of the development and consideration of the proposals, once analysed the results will be published on the engage page hosting all the information in respect of this matter. The service anticipates that this information will be published within the next 12 weeks and the exemption in section 27 of the 2002 Act would apply. This is not an absolute exemption but the Review Panel considered that as the information will be published shortly and there are currently data protection issues with the information in its current format, the public interest in upholding the exemption outweighs the publication of the material.

Learning Estate Review

The Review Panel noted, per the paragraph above, that what was sought was documentation rather than information. The Review Panel also noted the scope of its remit and considered a number of the questions/comments from the requester fell outwith the remit of the Review Panel.

The service confirmed that the following information which was held had been provided to the applicant and that appropriate searches within their service had been conducted:

- Please provide all learning estate review documents referring to Banchory-Devenick School.

Review for Portlethen Cluster has not yet commenced. All documents relating to the Learning Estates Review to date are provided on the engage page - Movement Towards a Sustainable Estate - Cluster Surveys | Engage Aberdeenshire.

- Please provide any scoring matrices used to assess school viability.

SWOT and scoring matrix templates provided as Appendix 1 and 2.

- Please provide any reports ranking schools by visibility, utilisation, sustainability or strategic importance.

Review not commenced as per above. All documents relating to the Learning Estates Review are provided on the engage page - Movement Towards a Sustainable Estate - Cluster Surveys | Engage Aberdeenshire.

- Please provide any reports identifying schools for potential closure.

There are no reports identifying potential schools for closure.

- Please provide any documents discussing Banchory-Devenick School prior to December 2025.

Not held.

The service confirmed that the answer in respect of the last question related solely to information relating to the school as part of the Learning Estates Review, this position was accepted by the Review Panel.

Legal Advice and Risk Assessment

The Review Panel noted that the Scottish Information Commissioner's Briefing on section 36(1) sets out what might be covered by this exemption.

The Court of Session issued a decision on 26 March this year on the extent of legal professional privilege and supported a wide interpretation. The Review Panel considered that the legal advice and the information sought by the requester was all covered by the exemption under section 36(1) of the 2002 Act relating to legal professional privilege. The Review Panel noted that there is public interest in the provision of information but considered that, in this instance, the public interest in maintaining the legal professional privilege outweighed the public interest in providing the information.

Political and Elected Member Briefings

The Review Panel noted the terms of the initial request and of the review request. The Review Panel directed that the service should treat this as a new request and provide a response to the requester within the statutory timescale of 20 working days.

The service confirmed that the following information which was held had been provided to the applicant and that appropriate searches within their service had been conducted:

Learning Estates officers met with ward members on 10/02/26 and informed them of what was happening and they were invited to the parent meetings. Council coleaders were provided with a briefing which contained the content of the ECS report previously provided, the only additional information is the following:

Next Steps

Initial engagement with parents on 5 March 2026 to:

- o Update on facilities situation.*
- o Advise of intention to progress statutory consultation on closure (a report will be presented to Education & Children Services Committee on 26 March 2026)*
- o Notify that Banchory Devenick School will relocate to Fishermoss School as a 'school-within-a-school' after the Easter break to mitigate risk of disruption to learning and to mitigate any Health & Safety risks.*
- o Advise that home to school transport will be provided for in-zone pupils, and transport from Banchory Devenick School for OOZ/City pupils).*
- o Emphasise that if we don't do a 'managed move' and the boiler fails, there will be an emergency move overnight causing disruption to learning.*

The service also provided the Review Panel with a link to the relevant report referred to in their response and it was agreed that this should be provided to the applicant:

[Education and Children's Services Committee – 26/03/26 – See Item 9](#)

The Review Panel noted that the link relates to the meeting page on the Council's Committee Management System which would enable the applicant to download the papers, read the applicable minutes and at watch the live recording of that meeting.

Condition Survey and Cost Presentation

The Review Pane noted that the review, that sought documentation rather than information, which is outwith the remit of the Review Panel.

Overall Concern

The Review Panel considered that the points made invited further comment rather than a request for information which fell outwith the remit of the Review Panel.

The Review Panel determined that the initial decision notice did require amendment to reflect the further information provided herein.

