

[REDACTED]
[REDACTED]

Date	14 August 2026
Your Ref	FOI-2026-3425
Our Ref	FOI-2026-3425

Enquiries to [REDACTED]
Email psd.foi@nhs.scot

Dear [REDACTED],

Freedom of Information Reference FOI-2026-3425

I refer to your Freedom of Information (Scotland) Act 2002 (FOISA) request that we received on 16 July 2026 requesting the following information:

Can you please confirm if the CLO/ NHS Lothian have received the costs awarded to them by the court from the unsuccessful petitioner, LP North Sixteen trading as Dears Pharmacy? A simple yes or no will suffice?

After a search of our records Public Services Delivery Scotland (PSD Scotland) can confirm that we are unable to confirm nor deny whether the Central Legal Office ("CLO") hold the information requested and therefore consider this response as an issue of a Notice under Section 18 of FOISA.

Any information held in relation to this request is exempt from release under Section 36(1) of the FOISA. The information is held in contemplation of litigation and forms part of formal communications within an ongoing legal case which carries litigation privilege. The information requested is therefore withheld and exempt from release under Section 36(1) of FOISA under the scope of litigation privilege.

Litigation privilege (also known as "communications post litem motam") is a distinct aspect of legal professional privilege. It is wider than communications between solicitor and client. It applies to information obtained or created in contemplation of litigation (legal action) and to communications when litigation is either pending or being considered. Litigation privilege applies to documents created by the party contemplating legal action, to expert reports prepared on their behalf and to legal advice given in relation to potential legal action. The privilege continues to apply after any litigation has been concluded.

The exemption section 36(1) of FOISA is subject to the public interest test. CLO have considered the public interest test when applying the exemption to the withheld information. It is clearly in the public interest for solicitors to be able to provide free and frank legal advice to their clients, considering and discussing all issues and options, without fear that the information obtained in the context of proceedings is released to the public, while the process is incomplete. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that

Chair Mr Keith Redpath
Chief Executive Professor Karen Reid

there is some public interest in release to encourage transparency within a public body, however, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Health Boards are able to receive legal advice in confidence and discuss the implications of that legal advice, like any other public or private organisation. There will always be a strong inherent public interest in maintaining the right to confidentiality of communications between a legal adviser and their client on administration of justice grounds.

I hope that you will find this response helpful and if you require any further information, please do not hesitate to contact me using the email address psd.foi@nhs.scot

If you are unhappy with any aspect of how we have dealt with your request, you can make representations to us asking us to review the handling of your request. Please write to the Associate Director Corporate Governance using the email address psd.foi@nhs.scot within 40 working days of the date of this correspondence.

If after a review you are still unhappy, you also have the right to apply to the Scottish Information Commissioner, who can be contacted at Kinburn Castle, St Andrews, Fife, KY16 9DS, or via their [online Appeal form](#).

Yours sincerely,

