



Dr Lucy Hunter Blackburn

Our Reference: 202300351973

17 May 2023

Dear Dr Lucy Hunter Blackburn,

REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)

Thank you for your request dated 17 April 2023 under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

You asked for the following information:

The letter published here [Gender recognition: letter to the Secretary of State for Scotland - 21 January 2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/gender-recognition/letter-to-the-secretary-of-state-for-scotland-21-january-2023/pages/2/) includes this section:

Over the course of 2022	Regular official-level meetings between SG, UKG and Northern Ireland officials on the GRR Bill and related issues. This included sharing of a draft Policy Summary for a Section 104 process, thematic discussions of relevant policy areas including pensions and benefits, passports and driving licenses, healthcare, young people, education, etc.
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This is a request for information on the dates of the meetings referred to here, and for each one sight of:

- the agenda
- any papers submitted by SG to the meeting and the date submitted
- minutes and any other records held by SG, including any handwritten notes and internal or external email exchanges, of what was discussed and agreed at these meetings



- any records held of reports to any Minister of what was discussed and agreed at these meetings.

Response to your request

In 2022, a meeting between Scottish Government officials and officials from the UK Government Scotland Office took place on 4 May 2022. Meetings between Scottish Government officials and officials in the UK Government Equalities Office and Northern Ireland took place on 26 January 2022 and 29 April 2022. From and including 19 May 2022 meetings were scheduled to take place every two weeks. It may be that some meetings were rescheduled or cancelled but we do not hold that information. There were not set agendas or minutes of those meetings. This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have some of the information you have requested.

Our aim is to provide information whenever possible. However, following consultation with the UK Government in this instance, some of the information you have requested as it relates to email exchanges between officials about those meetings is not held by the Scottish Government for the purposes of FOISA because we received it in confidence from the UK Government. This means that, under the terms of section 3(2)(a)(ii) of FOISA, we are unable to disclose it in response to your request. However, you may wish to submit a new request under the Freedom of Information Act 2000 (FOIA) to the UK Government Scotland Office and the UK Government Equalities Office.

An exemption under section 28(1) of FOISA about relations with the UK also applies to some of the information requested as it relates to extracts of email exchanges with UK Government about those meetings and papers sent to UK Government. This exemption applies because disclosure would be likely to, prejudice substantially relations between the Scottish Government and the UK Government because it would reveal candid internal discussion about the other administration's policies and prematurely reveal negotiating positions. It is essential for the effective administration of the UK as a whole that there should be regular, and often private, communications between the Scottish Government and the UK Government. Disclosure of this information will mean that frequent and open communication will be inhibited in the future. This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in maintaining relationships between the Scottish Government and the UK Government, and in protecting the free exchange of information between the administrations.

An exemption under section 29(1)(a) of FOISA on formulation or development of government policy applies to some of the information requested because it relates to the formulation and development of the Scottish Government's policy in extracts of email exchanges with UK Government about those meetings and papers sent to UK Government. This exemption is subject to the 'public interest test'. We have found that, on balance, the public interest lies in favour of upholding the exemption as there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on will be disclosed in the near future, when it may undermine or constrain the

Government's view on that policy while it is still under discussion and development.

An exemption under section 30(b)(i) of FOISA on free and frank provision of advice applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice as it relates to an extracts of a submission and briefings to Ministers, email exchanges about those meetings, papers sent to UK Government. This exemption recognises the need for Ministers and officials to have a private space within which to provide free and frank advice to Ministers and other officials before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on will substantially inhibit the provision of such advice in the future, particularly because these discussions relate to a sensitive issue. This exemption is subject to the 'public interest test'. We have found that, on balance, the public interest lies in favour of upholding the exemption as there is a greater public interest in allowing a private space within which officials can provide full and frank advice to Ministers and other officials as part of the process of exploring and refining the Government's position. This private thinking space is essential to enable all options to be properly considered, based on the best available advice.

An exemption under section 36(1) of FOISA applies to some of the information because it relates to legal advice and disclosure would breach legal professional privilege as it relates to extracts of email exchanges with UK government about those meetings and papers sent to UK Government. This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is some public interest in release as part of open and transparent government, and to inform public debate. 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 Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to Neil Rennick, Director of Justice, Room GW-02, St Andrew's House, Regent Road, Edinburgh, EH1 3DG or by email to Neil.Rennick@gov.scot. Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review in accordance with FOISA as soon as possible, and not later than 20 working days from the day following the date we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Yours sincerely

Gender Recognition Unit
CLLS : Gender Recognition

