



Dr Lucy Hunter Blackburn

Our Reference: 202300351973

29 June 2023

Dear Dr Lucy Hunter Blackburn,

Further to my letter of 8 June, I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA). You had initially asked for the following information in relation to “official level meetings that took place over the course of 2022 between SG, UKG and Northern Ireland Officials held on the GRR Bill and related issues”: In particular you requested:

- dates of the meetings, 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.

In your request for a review of our response you detailed that you were specifically requesting the following information:

1. whether as a point of fact the organisation holds information in any form on:
  - the dates of any other meetings
  - the seniority of the attendees at these meetings (specifically, whether any from either Scotland or the UK were sufficiently senior not to have their names redacted)
  - whether any Whitehall departments were represented other than the GEO and if so which
  - the dates on which any of the subjects mentioned in the 21 January letter were discussed, and when any other subjects were
  - whether the discussion of any of these was based on papers produced in advance by the



Scottish government

- the outcome of the discussions
- whether and when the content of the meetings was reported to Ministers

and (b) where it does hold any such information, whether the various exemptions quoted can be reasonably applied to all of it, to the extent that copies of no papers held have been provided, even with some content redacted.

I have concluded that the original decision should be confirmed with modifications.

Our original response provided you with information that meetings were held on 26 January 2022, 29 April 2022, 4 May 2022 and 19 May 2022. I have concluded that we hold information that meetings were also held on 31 May 2022, 16 June 2022, 4 August 2022, 6 October 2022, 17 November 2022 and 1 December 2022.

In addition to GEO, Scotland Office were represented at meetings.

In relation to whether any of the attendees at these meetings were sufficiently senior not to have their names redacted, the Scottish Government general policy about the disclosure of staff names, is to withhold the names of officials below Senior Civil Service level. This policy has been applied in relation to the information that is being provided to you. All of the attendees fall within the scope of this policy. It is standard Scottish Government practice for the Bill team to lead on issues related to the Bill.

In relation to the other information requested, our original response to your request explained that some of the information was being withheld under the terms of section 3(2)(a)(ii) of FOISA on the basis that it was not held by the Scottish Government for the purposes of FOISA because it was received in confidence from the UK Government. It also explained that a number of exemptions applied to some of the information requested. These exemptions were under section 28(1) of FOISA about relations with the UK as it relates to extracts of email exchanges with UK Government about those meetings and papers sent to UK Government; under section 29(1)(a) of FOISA on formulation or development of government policy; under section 30(b)(i) of FOISA on free and frank provision of advice, under section 36(1) of FOISA because it relates to legal advice and disclosure would breach legal professional privilege and under section 38(1)(b) as it relates to personal information.

My review has concluded that some information should be released to you as the exemptions originally quoted do not apply to this information. This is because I consider that some of the information is no longer held in confidence on behalf of the UK Government. Therefore, I have concluded that section 3(2)(a)(ii) does not apply.

However, I have concluded that some of the information you requested was correctly withheld under the other exemptions quoted in our initial response.

My review has concluded that an exemption under section 28(1) of FOISA about relations with the UK was correctly applied 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. 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. This exemption is subject to the 'public interest test'. I have concluded on balance that 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.

My review has concluded that an exemption under section 29(1)(a) of FOISA on formulation or development of government policy was correctly applied to some of the information requested because it relates to the formulation and development of the Scottish Government's policy in email exchanges with UK Government about those meetings and papers sent to UK Government. This exemption is subject to the 'public interest test'. I have concluded on balance that 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.

My review has also concluded that an exemption under section 30(b)(i) of FOISA on free and frank provision of advice was correctly applied 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 extracts of a submission and briefings to Ministers, email exchanges about those meetings and 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'. I have concluded on balance that 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.

My review has concluded that the exemption under section 36(1) of FOISA was correctly applied to some of the information requested 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'. I have concluded that on balance, the public interest lies in favour of upholding the exemption as there is a 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.

Further my review has concluded that an exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party, i.e. names of individuals. Disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

Please find attached a copy of the information my review has concluded should be released to you.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at: <https://www.itspublicknowledge.info/appeal>

You can also contact the Commissioner at –  
The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

Prisons Policy Unit  
**COMJUS : Prisons and Parole Unit**