



Scottish Information
Commissioner
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Decision Notice 083/2024

Communications relating to an appeal

Authority: Scottish Ministers

Case Ref: 202101333

Summary

The Applicant asked the Authority for all correspondence relating to its consideration of an appeal made to the Scottish Information Commissioner, and the subsequent decision issued by the Commissioner, in response to that appeal.

The Authority disclosed some information, but withheld the remainder on the grounds that it was exempt from disclosure. The Commissioner found that the Authority had partially breached FOISA in responding to the request. The Authority was not entitled to apply the exemptions in 30(b)(i) and (ii) to all of the information it was withholding. However, the Commissioner found that the Authority was entitled to withhold some information under sections 26(c), 30(b) and (c), 35(1)(g) and 36(1) of FOISA. The Commissioner required the Authority to disclose the information it had wrongly withheld.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) and 2(2)(b) (Effect of exemptions); 26(c) (Prohibitions on disclosure); 30(b) and (c) (Prejudice to effective conduct of public affairs); 35(1)(g) and (2)(b) (Law enforcement); 36(1) (Confidentiality); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 16 July 2021, the Applicant made a request for information to the Authority. He asked for;
 - (i) Any and all internal and external correspondence including emails, letters, WhatsApp messages, Signal messages, text messages relating to government business from officials, ministers, and special advisers and any other interested party relating to the consideration of the Scottish Information Commissioner appeal which resulted in decision 083/2021 between December 1, 2020 and 27 May, 2021.
 - (ii) Any and all internal and external correspondence including emails, letters, WhatsApp messages, Signal messages, text messages relating to government business from officials, ministers, and special advisers and any other interested party relating to the consideration of how to respond to the SIC decision notice 083/2021 post-May 27.
2. The Authority responded on 14 September 2021, and provided him with some of the information he had requested. It also notified him that it was withholding some information from him under sections 25(1), 26(c), 30(b) and (c), 35(1)(g) (read in conjunction with 35(2)(b)), 36(1) and 38(1)(a) and (b) of FOISA.
3. On 16 September 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant was dissatisfied with the decision because of the time taken to provide a response, and he challenged the Authority's application of exemptions, arguing (where applicable) that the public interest favoured disclosure.
4. The Authority notified the Applicant of the outcome of its review on 14 October 2021. It apologised for its failure to respond on time, and it upheld, without modification, all of the exemptions it had relied on to withhold information.
5. On 25 October 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not agree that the exemptions applied to the withheld information, and even if they did, he thought there was an overwhelming public interest in disclosure.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 1 December 2021, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions regarding its reliance on the exemptions contained in sections 26(c), 30(b) and (c), 35(1)(g) and 36(1) of FOISA and (where appropriate) its consideration of the application of the public interest test.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Scope of the investigation

10. The Applicant did not challenge the Authority's reliance on section 25(1) or sections 38(1)(a) and (b) of FOISA. As a result, the Commissioner will not consider any of these exemptions in this decision.

11. The information and exemptions that will be considered in this decision are as follows:

Section 26(c)

- Document 13 (withheld in its entirety)

Section 35(1)(g) in conjunction with section 35(2)(b)

- Document 13 (withheld in its entirety)

Section 30(b)(i)

- Document 7 (paragraphs 11, 15, 20, 29, 30, 32, 34, 35, 36, 37 to 44, 46 to 48). Annex (paragraphs 7, 8, 10 to 13, 14, 15, 18 to 20)

Section 30(b)(ii)

- Document 11 (two paragraphs in an email) and Document 20 (certain information against bullet points 1, 3 and 4)

Section 30(c)

- Document 22 (page 2, one sentence) and Document 7 (page 2, half a line)

Section 36(1)

- Documents 7 and 15-18 (some information withheld)
- Documents 14, 26-34, 36-47 and 49-69 (withheld in their entirety).

Section 26(c) of FOISA

12. Under section 26(c) of FOISA, information is exempt information if its disclosure by a Scottish public authority (otherwise than under FOISA) would constitute, or be punishable as, a contempt of court.
13. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA (see section 2(2)(b)).
14. As noted above, this exemption has been applied to the whole of document 13.
15. Document 13 is the Decision Report issued into the outcome of a complaint involving the former First Minister, Alex Salmond, which was subsequently reduced by the court.
16. In its response to the Applicant, the Authority explained that it was applying section 26(c) to this document because disclosure would be incompatible with the agreement intended to settle the judicial review proceedings, to which the court gave its authority on 8 January

2019. As part of that agreement, the Decision Report was declared to be unlawful and it was reduced, and the Scottish Ministers gave an undertaking to the court.

17. The Authority took the view that the aim of the undertaking would be completely undermined were the Decision Report to be disclosed. It further argued that breach of an undertaking was punishable as a contempt of court, and so the exemption applied.
18. In its submissions to the Commissioner, the Authority submitted that the Joint Minute between the parties bringing the judicial review proceedings to a conclusion provided that the Scottish Ministers gave an undertaking in the following terms, which was then to be recorded in the minute of proceedings (and was so recorded, as narrated in the interlocutor):

“Save insofar as necessary to comply with any lawful requirement, to co-operate with any criminal investigation, or as may otherwise be approved by the Court, the [Scottish Ministers] will not cause or permit the publication or dissemination to any other person of the said Investigating Officer’s report or any of the statements or other material taken or prepared by her in the course of preparing same.”
19. The Authority submitted that the Joint Minute, of which the undertaking forms part, was intended to resolve the dispute between the Scottish Government and the former First Minister relating to the investigation of the formal complaints which had been made about him, and the decision of the Permanent Secretary in respect of those formal complaints in the form of the Decision Report.
20. The overall intention of the parties, to which the Joint Minute was intended to give effect was clearly to “wipe the slate clean” in respect of the complaints that had been made. In order to achieve this desired outcome, the Authority argued that the Decision Report had to remain confidential.
21. The Authority also submitted that the section 11 order of 8 October 2018 (which is a perpetual order) prohibits the disclosure of information that would lead to the identification of the complainers. It argued that if the reduced Decision Report were redacted so as to remove all information that would lead to the identification of the complainers, then it would be unintelligible. The Authority noted that the Commissioner has previously considered document 13, in [Decision 100/2022](#)¹, and he found that the reduced Decision Report was exempt under section 26(c) of FOISA.
22. In his application to the Commissioner, the Applicant commented that the exemption had been applied to vast amounts of information when it should be applied as narrowly as possible. He contended that much of the concerns, regarding the identification of the complainers, can be overcome by anonymisation in line with the established naming convention used during Mr Salmond’s trial and the Holyrood Inquiry.
23. The Applicant also submitted that the decision report is at the heart of a parliamentary inquiry, it was at the heart of a judicial review, and it was included in evidence for the criminal trial of a former First Minister (Mr Salmond). The Applicant argued that, in order for the public to be fully informed and to be able to hold the Scottish Government to account, the report must be disclosed into the public domain, with appropriate redactions. The Applicant argued that this goes to the heart of the issue on transparency and accountability.

¹ <https://www.itspublicknowledge.info/decision-1002022>

24. It is clear to the Commissioner, for the reasons set out above, that any information which would identify either of the complainants is exempt from disclosure under section 26(c) of FOISA.
25. In Decision 100/2022, the Commissioner found that he could not disclose any of the information that had been withheld under 26(c) of FOISA, as to do so, would risk disclosing the identity of the complainants.
26. In his conclusions on Decision 100/2022, the Commissioner noted that he was conscious of the fact that he must consider all of the means reasonably likely to be used by third parties to identify the complainers. He accepted then that there would be a significant amount of speculation as to the identities of the complainers, particularly given the high profile of Mr Salmond, which meant that any information disclosed in relation to the complaints is highly likely to be scrutinised, in conjunction with other information already in the public domain, in an attempt to identify the individuals.
27. The Commissioner is satisfied that in this case, disclosing the vast majority of the information in document 13 would lead to the identification of the complainers, either directly or indirectly, contrary to the section 11 order. He finds that such information is exempt from disclosure under section 26(c) of FOISA.
28. There is a small amount of information in document 13 which is not covered by the terms of the undertaking and which the Commissioner does not consider would lead to the identification of the complainers. The Commissioner will now go on to consider whether this information is exempt from disclosure under section 35(1)(g) of FOISA

Section 35(1)(g) – Law enforcement

29. Under section 35(1)(g) of FOISA, information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the exercise by any public authority (as defined by the Freedom of Information Act 2000) or by any Scottish public authority (as defined by FOISA) of its functions for any of the purposes listed in section 35(2). (The Authority is a Scottish public authority for the purposes of FOISA.)
30. The Authority argued that disclosure of the information in document 13 would, or would be likely to, prejudice substantially the exercise of its functions of the purposes specified in section 35(2)(b), i.e. to ascertain whether a person is responsible for conduct which is improper.
31. The exemptions in section 35 are all qualified exemptions, in that they are subject to the public interest test in section 2(1)(b) of FOISA. In addition, the exemptions can only apply where substantial prejudice would, or would be likely to, occur as a result of the disclosure of the information. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner's view is that the harm in question must be of real and demonstrable significance. An authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur and therefore needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure, at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.
32. The Commissioner must therefore consider three separate matters:
 - does the Authority have a function in relation to the purpose mentioned in section 35(2)(b)?

- if it does, would disclosure of the information prejudice substantially, or be likely to prejudice substantially, the Authority's ability to exercise that function?
- if such prejudice would, or would be likely to, occur, does the public interest in maintaining the exemption outweigh that in disclosure of the information?

Does the Authority have a function in relation to section 35(2)(b)?

33. The Authority argued that disclosure of the information would be likely to prejudice substantially the exercise by the Scottish Government of its functions in relation to ascertaining whether a person is responsible for conduct which is improper.
34. The Applicant argued that the Scottish Government had lost all of its credibility around how it exercised its functions in relation to this particular harassment complaints case, the decision report relating to it, and the fallout from it which includes the decision from the Commissioner and this current FOI request.
35. The Commissioner notes the Applicant's comments but he is satisfied that the investigation of complaints will continue to be a function of the Authority, even if the mechanism for investigating those complaints change, i.e. even if any future investigations were to be carried out externally.
36. The Commissioner is satisfied that the Authority has a function in relation to the section 35(2)(b) of FOISA.

Would disclosure prejudice the exercise of that function?

37. The Authority submitted that disclosure of the information would, or would be likely to, cause substantial prejudice to its ability to investigate future complaints of improper conduct because it is likely to deter other complainers from coming forward in future.
38. The Authority argued that those who make complaints have a reasonable expectation of confidentiality, and that this is particularly important where there is an imbalance of power (as when a civil servant makes a complaint about a minister). The negative effects of steps which reduce the confidentiality available to complainers were canvassed by the complainers in the evidence they gave to the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints. The Authority referred to a [newspaper article](#)² that reported on this evidence,
39. The Authority also commented that the persons complained about would be less likely to cooperate voluntarily with investigations if they believed that information provided by them was likely to be disclosed outwith the investigation process.
40. Taken together, this would, in the Authority's view, substantially prejudice its ability to investigate such complaints, and so would constitute substantial prejudice for the purposes of ascertaining whether a person is responsible for conduct which is improper.
41. The Applicant submitted that the Scottish Government was in the process of reviewing its approach to harassment complaints, therefore this information request and any disclosure of the decision report would not have any additional impact on any future complainers coming forwards, than the inquiry and other court processes already have.

² <https://www.scotsman.com/news/politics/alex-salmond-inquiry-women-at-centre-of-complaints-tell-of-culture-of-permissiveness-around-harassment-3175124>

42. The Commissioner acknowledges that complaint investigations of this kind rely upon the cooperation of witnesses coming forward and providing evidence: they would expect their identities to be revealed only in the context of the investigation and any subsequent action which would follow that investigation. The Commissioner accepts that disclosure outwith that context would be likely to have a serious negative impact on the investigative process, inhibiting individuals who might otherwise have done so from coming forward and providing full and frank statements. He has borne in mind that investigations of this kind will always have a degree of political sensitivity attached to them.
43. The Commissioner is satisfied, in the circumstances, that disclosure of the information would make it much less likely that those participating in such an investigation, such as complainers and witnesses, would be willing to provide information about concerns, to the substantial prejudice of the Authority's ability to investigate matters concerning the conduct of persons. This would, in turn, be to the substantial prejudice of the Authority's function to promote the observance of standards of conduct.
44. The Commissioner notes the arguments put forward by the Applicant regarding the Authority's review of its complaint procedures, but he does not accept that the adoption of new complaints procedures means that information relating to complaints handled under the old procedures could be disclosed without harm. He considers that the Authority's ability to exercise its functions in relation to the investigation of complaints of improper behaviour in the future, would be negatively affected by disclosure.
45. The Commissioner is therefore satisfied that disclosure of the information in document 13 would have prejudiced substantially, or would have been likely to prejudice substantially, the exercise of the Authority's functions for the purpose mentioned in section 35(2)(b) of FOISA. Consequently, he is satisfied that the information is exempt from disclosure in terms of section 35(1)(g) of FOISA.

Does the public interest in maintaining the exemption outweigh that in disclosure of the information?

46. As noted above, the exemption in section 35(1)(g) is subject to the public interest test contained in section 2(1)(b) of FOISA. This means that, although the Commissioner has accepted that the information is exempt from disclosure under section 35(1)(g) of FOISA, he must order the information to be disclosed unless he is satisfied, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs that in disclosing the information.
47. The Authority recognised that there was a general public interest in disclosure as part of open and transparent government, and to inform public debate. It also noted that there was a public interest in understanding how it dealt with these complaints, particularly given the outcome of the subsequent judicial review proceedings. However, the Authority believed that there was a greater public interest in ensuring that future complainers are not deterred from making complaints of improper conduct, and in respecting the confidentiality which complainers reasonably expect as part of that process. In its view, the function of ascertaining whether a person is responsible for conduct which is improper would be frustrated in its entirety if complainers were unwilling to make such complaints because they reasonably apprehended that information would be made public.
48. Although the Applicant did not believe the exemption applied, he stated that the public interest in accountability and transparency around this object failure of governance overrides

the public interest of non-disclosure. He argued that the information should be disclosed on public interest grounds.

49. The Commissioner acknowledges the strong public interest in the accountability of public authorities. He acknowledges the general public interest in the Authority being open and transparent, particularly given the subject and history of the complaints.
50. However, as in Decision 100/2022, the Commissioner also accepts that there is a strong public interest in ensuring that future complainers are not deterred from making complaints of improper conduct and that the Authority continues to be able to ascertain whether individuals are responsible for improper conduct. It is important, with a view to ensuring high standards of conduct are observed, that the Authority is able perform these investigative functions effectively.
51. Taking account of all the circumstances of this case including the nature of the withheld information concerned, the Commissioner is satisfied that the public interest in maintaining the exemption outweighs that in disclosure. Consequently, he finds that the Authority was entitled to withhold information in document 13 under section 35(1)(g) of FOISA.

Section 36(1) of FOISA

52. As noted above, this exemption has been applied to the entirety of documents 14, 26-34, 36-47 and 49-69 and to parts of documents 7 and 15-18.
53. Section 36(1) of FOISA exempts from disclosure information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
54. Among the types of communication which fall within this category are those which are subject to legal professional privilege.

Legal advice privilege

55. One type of communication covered by this exemption is that to which legal advice privilege, a form of legal professional privilege, applies. Legal advice privilege covers communications between lawyers and their clients in the course of which legal advice is sought or given. For legal advice privilege to apply, certain conditions must be fulfilled:
 - (i) the communications must involve a professional legal adviser, such as a solicitor or an advocate. This may include an in-house legal adviser or an external solicitor engaged by the Ministers;
 - (ii) the legal adviser must be acting in his/her professional capacity; and
 - (iii) (the communications must occur in the context of the legal adviser's professional relationship with his/her client.
56. The Authority has argued that the withheld information constitutes confidential communications between in-house legal advisers acting in their professional capacity and the Scottish Government as their client, within which legal advice was provided. The Authority contended that all of the material was either made or affected for the principal or dominant purpose of seeking or giving legal advice, or evidenced those communications.
57. The Authority argued that release of the material would breach legal professional privilege by divulging information about the points being considered by lawyers, their comments and the

issues being flagged up for further consideration. The Authority submitted that all of the necessary conditions for legal advice privilege to apply were satisfied.

58. Having considered the content of all of the information withheld under section 36(1) of FOISA, the Commissioner is satisfied that the information relates directly to seeking and obtaining legal advice from a professional legal adviser, acting in that capacity.
59. Information cannot be privileged unless it is also confidential. It must be information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. The claim must be capable of being sustained at the time the exemption is claimed: the information must possess the quality of confidence at that time, and so cannot have been made public, either in full or in a summary substantially reflecting the whole.
60. The Authority submitted that a claim to confidentiality could be maintained in legal proceedings because the correspondence in question was only shared between the Scottish Government and its legal advisers. It argued that the advice has not at any time been shared with anyone outwith the Scottish Government (apart from being provided to the Commissioner for the purposes of his investigation into this appeal). The Authority contended that the information was confidential at the time they responded to the Applicant's request and requirement for review (and that it remained so). It maintained that legal professional privilege had not been waived.
61. Having considered both the information and the views put forward by the Applicant and the Authority, the Commissioner is satisfied that the withheld information remained confidential at the time the Authority responded to the Applicant's information request and requirement for review (and that it remains so now).
62. The exemption in section 36(1) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Having decided that the information is exempt under section 36(1), the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

Public interest test

63. The Authority acknowledged that there was a public interest in the release of the legal advice contained within this information, for reasons of transparency and openness. It recognised the public interest in the handling of FOI requests, and in the handling of requests on this subject in particular.
64. However, the Authority argued that there was a very strong public interest in maintaining the exemption relating to legal professional privilege in order to ensure confidentiality of communications. The Authority submitted that it remains important in all cases that lawyers can provide free and frank legal advice which considers and discusses all issues and options without fear that that advice may be disclosed and, as a result, potentially taken out of context.
65. The Authority argued that there was a strong public interest in protecting the confidentiality of this information in order to ensure that the Scottish Government was able to discuss and take policy decisions in full possession of thorough and candid legal advice. It submitted that this ensures that the Scottish Government can take decisions in a fully informed legal context, having received legal advice in confidence as any other client would.

66. On balance, the Authority argued that, in this instance, the public interest in maintaining the exemption outweighs that of disclosure, given the overriding public interest in maintaining the confidentiality of communications between lawyers and their clients and the public interest in allowing for full and detailed internal consideration of the issues at hand.
67. The Applicant argued that the public interest in disclosure outweighed the public interest in maintaining the exemption.

The Commissioner's view on the public interest

68. The Commissioner has considered carefully the representations made by both the Applicant and the Authority when assessing and balancing the public interest in this case. He has also fully considered the information withheld in this case.
69. The Commissioner acknowledges the public interest in the transparency and accountability expected of all authorities, and that disclosure of the information would go some way towards providing that transparency and accountability.
70. The Commissioner also recognises that there is a strong public interest in understanding how the Authority engaged with his office in relation to this FOI request, and how it responded to the Decision he published. The complaints against the former First Minister, and the Scottish Government's role in how it handled those complaints, are matters of significant public interest, particularly given the outcomes of the judicial review, brought by Mr Salmond.
71. Nevertheless, there is a strong inherent public interest, recognised by the courts, in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. In a Freedom of Information context, the strong inherent public interest in maintaining legal professional privilege was emphasised by the High Court (of England and Wales) in the case of [Department for Business, Enterprise and Regulatory Reform v Information Commissioner and O'Brien \[2009\] EWHC 164 \(QB\)](#)³. Generally, the Commissioner will consider the High Court's reasoning to be relevant to the application of section 36(1) of FOISA.
72. The Commissioner acknowledges that there will be occasions where the significant public interest in favour of withholding legally privileged communications may be outweighed by a compelling public interest in disclosing the information. One of those occasions may be the disclosure of information as a means to determining how an Authority complied with the Commissioner's investigation, and what legal advice it obtained throughout this process.
73. However, the Commissioner must agree with the Authority that, in this case, there is a stronger public interest in protecting the confidentiality of the information in order to ensure that the Authority can continue to take decisions based on the advice it receives in confidence from its legal advisors.
74. Having considered the public interest arguments advanced on both sides, and the withheld information, the Commissioner is not satisfied that the public interest in disclosure of this particular information is sufficiently compelling to outweigh the strong public interest in maintaining the confidentiality of communications between legal adviser and client. He has

³ [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2009/164.html&query=\(title:\(+o%27brien+\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2009/164.html&query=(title:(+o%27brien+)))

reached this conclusion bearing in mind the importance attached by the courts to maintaining confidentiality of communications on administration of justice grounds.

75. Consequently, he accepts that the Authority correctly withheld the legal advice under section 36(1) of FOISA.

Section 30(c) of FOISA

76. As noted above, the Authority is withholding limited information in document 7 (half a line) and document 22 (one sentence) under this exemption.
77. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs." The use of the word "otherwise" distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
78. In order for the exemption in section 30(c) to be upheld, the prejudice caused by disclosure must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case-by-case basis, taking into consideration the content of the information and all other relevant circumstances.

The Authority's submissions

79. In relation to the information redacted from document 22, the Authority submitted that this information was provided in confidence to the Commissioner in its submissions in respect of [Decision 083/2021](#)⁴, to outline the steps taken by the Scottish Ministers to protect the identity of the individuals who had submitted harassment complaints.
80. The Authority argued that it would substantially inhibit its ability to fully explain the background, offer comments in support of its approach and to participate fully in an appeal investigation if it was required to disclose information provided in confidence from its submissions.
81. In addition, the Authority submitted that releasing this information would disclose the internal safeguards in place to protect the confidentiality of this sensitive information. The Authority explained that the redaction had been made to withhold the approach taken by the FOI Unit and policy colleagues in handling the cases regarding the former First Minister, to ensure that the identities of the complainers were not unnecessarily disclosed.
82. In relation to the information redacted from document 7, the Authority submitted that this information discloses the source of legal advice provided to the Scottish Government.
83. It argued that disclosure of details of whose advice was sought on particular legal aspects would significantly harm the conduct of public affairs by breaching the Law Officer

⁴ <https://www.itspublicknowledge.info/decision-0832021>

Convention, as it would reveal whether or not advice on this topic had or had not been sought from the Law Officers.

84. The Authority submitted that revealing whether the Law Officers had been asked to advise on different aspects would encourage people to draw conclusions regarding the importance placed by government on aspects of FOI handling, and whether or not there were uncertainties regarding the Scottish Government's position when considering its response to the Commissioner's decision.
85. If this occurred, the Authority argued that this would significantly harm the effective conduct of public affairs by placing undue pressure on Ministers and officials in future to consider these factors before deciding to consult the Scottish Government Legal Department or other solicitors, Counsel and/or the Law Officers. All these factors would be likely to significantly harm the effective conduct of government business by dissuading officials and/or Ministers from requesting legal advice as and when they need it, for fear of information about the source of the advice being divulged and subjected to public and media speculation.

The Commissioner's views on the exemption

86. Information can only be exempt under section 30(c) of FOISA if its disclosure would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. Having considered the nature and content of the withheld information, together with the Authority's submissions, the Commissioner accepts that disclosure of the withheld information would be likely to cause substantial prejudice to the effective conduct of public affairs.
87. He finds that disclosure of this information would have a detrimental impact on the Authority's willingness to provide the Commissioner with sensitive and detailed arguments as part of the Commissioner's investigations into alleged breaches of FOISA. He accepts that the information that has been redacted from document 22, was provided to him in confidence, in order that he fully understood the Authority's arguments and the position it had taken to safeguard the identity of the complainants. The Commissioner is satisfied that if he ordered disclosure of this information, it would dissuade the Authority (and other authorities) from providing him with the information he needs to reach a decision, and if this occurred, it would, or would be likely to, prejudice the effective conduct of public affairs. He finds that the Authority was entitled to apply the exemption in section 30(c) of FOISA to this information.
88. The Commissioner has also considered the Authority's arguments on withholding the source of its legal advice, as redacted from document 7. The Commissioner notes that the Law Officers Convention is reflected in the Scottish Ministerial Code, and that it prevents the Scottish Government from revealing whether Law Officers have or have not provided legal advice on any matter. The Commissioner has considered this issue in previous decisions, most recently in [Decision 121/2019](#)⁵, and in each case he has accepted the importance of the Law Officer Convention and the risks posed by its breach. The Commissioner has taken a similar approach in this case, and he finds that the exemption contained in section 30(c) of FOISA is engaged, with respect to this information.
89. The Commissioner will now go on to consider the public interest test in relation to the information that he has found to be correctly withheld under section 30(c) of FOISA.

Public interest test - section 30(c)

⁵ <https://www.itspublicknowledge.info/decision-1212019>

90. As noted above the exemption in section 30(c) is subject to the public interest test required by section 2(1)(b) of FOISA.

Authority's submissions on the public interest

91. The Authority argued that, on balance, the public interest lies in favour of upholding the exemption. It recognised that there was a public interest in disclosing information as part of open, transparent and accountable government.
92. However, the Authority submitted that there was a greater public interest in ensuring that Ministers and officials are able to discuss and agree an approach to the handling of FOI requests before making a decision which is communicated to the requester, and in ensuring that authorities are able to participate fully in the Commissioner's investigation process, while also taking account of the sensitive nature of the documents being considered and the need to maintain the anonymity of complainers as far as possible.
93. With regard to the source of its legal advice, the Authority submitted that releasing information about the source of legal advice would be a breach of the long-standing Law Officer Convention (reflected in the Scottish Ministerial Code) which prevents the Scottish Government from revealing whether Law Officers either have or have not been asked to provide legal advice on any matter. The Authority noted that the Ministerial Code states, at paragraph 2.38, that Ministers must not divulge who provided the advice whether it is from the Law Officers or anyone else.
94. The Authority contended that there was no public interest in breaching that Convention by divulging which lawyers were asked to provide advice on any issue as the public interest considerations in maintaining the Law Officer convention require to be given considerable weight. The Authority submitted that it was difficult to see what countervailing public interest benefit is achieved by disclosing whether or not the Law Officers have been asked to provide advice in cases such as this through disclosure of the fact they have been involved or have not been involved in the advice. It noted that disclosure of that fact does not provide access to the legal advice itself.
95. The Authority conceded that there may sometimes be a legitimate public interest in knowing the legal basis for key government decisions and actions. However, merely revealing whether the Law Officers were or were not asked to provide advice would not advance that interest. Equally, it argued that it is not necessary for anyone to know who gave the advice to be able to question Ministers or hold them to account for the legality of their conduct.
96. Furthermore, the authority argued that to disclose, other than in exceptional cases, the source of the legal advice for the Scottish Government risks unduly politicising the role of the Law Officers and could lead to them being held responsible for essentially political decisions. If this happened, it would risk seriously undermining the processes by which the government obtains legal advice and undermine the public interest in good governance and the maintenance of the rule of law within government which the convention against disclosure of the source and content of Law Officer advice is designed to protect.
97. Overall, while the Authority acknowledged some general public interest reasons in disclosing who advice was sought from, it submitted that the strong public interest in allowing the Scottish Government to decide when and from whom it seeks advice as appropriate, and also the very strong public interest in upholding the Law Officer Convention, outweighed the public interest in disclosure.

Applicant's submissions on the public interest

98. The Applicant rejected the arguments put forward by the Authority and contended that the public interest favoured disclosure.

The Commissioner's view on the public interest – section 30(c)

99. The Commissioner notes that there are two types of information being withheld under section 30(c) of FOISA; information that reveals the source of the Authority's legal advice, and information provided in confidence to the Commissioner as part of his investigation into the Authority's handling of a FOI request, made by the Applicant.

100. In relation to the former, the Commissioner is satisfied that the public interest lies in protecting the source of the Authority's legal advice. He has taken account of the strong public interest arguments put forward by the Applicant, but he is not persuaded that disclosure of the name(s) of those providing the Authority with legal advice would necessarily address those public interest concerns. He acknowledges that disclosure of those names would reveal whether or not Law Officers have advised the Scottish Government, and this may increase transparency around the source of the legal advice that underpinned the Scottish Government's actions.

101. However, he considers that the public interest lies in maintaining the Law Officers Convention, which is reflected in the Scottish Ministerial Code, and which prevents the Scottish Government from revealing whether Law Officers have or have not provided legal advice on any matter. The Commissioner finds that the Authority has correctly withheld the source of its legal advice, in document 7, under section 30(c) of FOISA.

102. The other information that has been withheld is information that was provided to the Commissioner by the Authority, as part of his investigation into the Authority's handling of another FOI request that was appealed to him. As noted above, the Commissioner has already concluded that disclosure of this information would have a detrimental impact on the Authority's willingness to provide detailed and sensitive information to the Commissioner in future investigations. He has accepted that if this occurred, it would impede the Authority's willingness to provide the Commissioner with all of the information he needs in support of his arguments in other FOI appeals, as it may omit key details, for fear of the harm that may be caused if it were to be subsequently disclosed under FOISA.

103. The Commissioner recognises that sometimes authorities must provide him with sensitive and confidential information in order to enable him to carry out a thorough investigation, and to reach a fully informed decision. While the Commissioner will generally reproduce the arguments provided by authorities and applicants in his decision notice, in some cases, where information is sensitive, he will simply refer to arguments made or taken account of, in order to protect the confidentiality of the investigative process.

104. Having considered the information that has been redacted in document 22, the Commissioner is satisfied that disclosure in this case would, or would be likely to, prejudice substantially the Authority's ability to execute its functions in relation to the FOI appeal process, as it would substantially inhibit the Authority from providing him with relevant, sensitive information in future investigations. Having weighed up the public interest arguments for and against disclosure, he is satisfied that disclosure of this information would cause the harm claimed, and if this occurred it would not be in the public interest.

105. The Commissioner is therefore satisfied that the Authority has correctly withheld this information under section 30(c) of FOISA.

Section 30(b)(i) of FOISA

106. The Authority is withholding some information in document 7 under section 30(b)(i) of FOISA. Section 30(b)(i) provides that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
107. In applying the exemption in section 30(b)(i), the chief consideration is not whether the information constitutes advice, but whether the disclosure of that information would, or would be likely to, inhibit substantially the provision of advice.

The Authority's submissions

108. The Authority explained that the information redacted from document 7 is advice from the FOI Unit's Head of Casework to the Deputy First Minister on the consideration of the Scottish Government's response to [Decision 083/2021](#)⁶.
109. The Authority argued that it was essential for Ministers and officials to be able to communicate with each other, receive advice from specialists (including its FOI Unit) to fully consider all options when responding to decisions issued by the Scottish Information Commissioner. It notes that this advice sets out officials' candid assessment of the decision, the status of the Decision Report and the underlying advice on the handling of a new review response as required by the decision. The Authority submitted that officials would be reluctant to set out the potential options open to Ministers and associated analysis of the potential consequences of actions taken as fully and in such candid terms if they thought that their free and frank assessment of the decision and initial handling advice would be disclosed into the public domain.
110. The Authority argued that, on such a sensitive matter, if the full advice on which decisions on this process are to be made was disclosed, its ability to test robustly proposed positions before using them publicly would be compromised substantially if every preliminary thought that had been recorded had to be disclosed. It submitted that officials would be far less likely to provide advice that fully tested all propositions if this advice was to be disclosed, particularly when decisions have not yet been made on the issue.
111. The Authority argued that disclosing the content of document 7 is likely to result in discussions about FOI handling being less detailed, which would diminish the quality of the advice provided to Ministers and officials. It noted that it would be Scottish Government officials who would be inhibited from providing advice of this nature in future.

The Commissioner's view on the exemption

112. The Commissioner has considered all the submissions made by the Authority and the Applicant, along with the withheld information under consideration.
113. He notes that document 7 was drafted after the Commissioner issued Decision 083/2021 and provided advice to the Deputy First Minister and Cabinet Secretary for Covid Recovery, from the Authority's FOI Unit. This document provides background information on the Authority's handling of the information request and review outcome, and it provides recommendations on how the Authority should respond to the Commissioner's decision.

⁶ <https://www.itspublicknowledge.info/decision-0832021>

114. The Commissioner further notes that much of this document has been disclosed to the Applicant, with only specified paragraphs withheld under section 30(b)(i) of FOISA. Details of this information that is being withheld is set out above, in paragraph 11.
115. The Commissioner accepts that, in the circumstances of this case, officials required a private space to discuss past actions and future options freely and frankly. The Commissioner accepts that there was a need for Ministers and officials to have a private space to discuss the Commissioner's findings in Decision 083/2021, with a view to determining whether or not an appeal would be made. The Commissioner considers that it is necessary for authorities to have some private space to reflect on their arguments and consider whether or not the Commissioner has erred in law. He is satisfied that disclosure of most of this advice (at the time of the request or review) would, for the reasons given by the Authority, substantially inhibit those involved from giving their advice freely in the future.
116. However, the Commissioner considers that there are some sections of document 7, which have been wrongly withheld under section 30(b)(i) of FOISA, and which do not engage the exemption. Specifically, he considers that the information withheld in paragraphs 11, 15 and 20 should be disclosed, as he is not satisfied that the Authority has evidenced harm in disclosure of this information.
117. As the Commissioner has found that section 30(b)(i) of FOISA does not apply to this information, he is not required to consider the public interest at this point. He requires the Authority to disclose this information to the Applicant.
118. The Commissioner considers that disclosure of the remaining information would, or would be likely to, inhibit substantially the free and frank provision of advice for the purposes of deliberation in the future. The Commissioner is therefore satisfied that this information is exempt from disclosure under section 30(b)(i) of FOISA. He will now go on to consider the application of the public interest test in section 2(1)(b) of FOISA.

Public interest test - section 30(b)(i)

119. As noted above the exemption in section 30(b)(i) is subject to the public interest test required by section 2(1)(b) of FOISA.

The authority's submissions about the public interest

120. The Authority argued that, on balance, the public interest lay in favour of upholding the exemption. It recognised that there was a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. It also acknowledged the public interest in how requests for information, including where the Commissioner has issued a decision in relation to an information request are dealt with by the Scottish Government.
121. However, it maintained that these factors were outweighed by the public interest in allowing Scottish Government officials to have a private space where advice can be given in as free and frank a manner as possible. The Authority argued that it was important to protect some private space, while still acknowledging the general principle of openness, to allow all options to be fully and properly considered.
122. The Authority submitted that this was to the overall benefit of good decision making, and to ensure that the process for handling requests for information and decisions from the Commissioner is developed with the best advice to ensure that sound decisions are taken. The Authority contended that the public interest lay in upholding the exemption

The Applicant's submissions about the public interest

123. The Applicant argued that there was a clear public interest in how the Authority handled the FOI request, and review requirement, that resulted in Decision 083/2021. The Applicant argued that disclosure could help counter accusations of conspiracy, it would aid public debate and discussion of the issue, and that it would shine a clear light of transparency on an issue that has been hotly contested in the public and political arena.
124. The Applicant submitted that it was clear that the Authority was concerned that disclosure of the information may cause it embarrassment, as alluded to in its mention of "frank appraisals". However, he argued that this was no reason to withhold the information. He submitted that he could see no reason or evidence as to why disclosure of this information specifically would lead to FOI teams providing the Authority with any less frank advice in the future.

The Commissioner's view on the public interest - section 30(b)(i)

125. The Commissioner has considered carefully all the public interest arguments he has received.
126. The Commissioner acknowledges that there is a public interest in transparency in relation to the actions and decision-making processes of the Scottish Government, and he accepts that disclosure of the free and frank advice contained in the withheld information would shed some light on these actions and processes.
127. However, the Commissioner also accepts that disclosure of this information would have an adverse impact on such free and frank advice being provided in future. The Commissioner recognises that officials must be allowed to offer free and frank advice to Ministers on FOI matters, particularly where the Authority has to consider whether or not to appeal one of the Commissioner's decisions. He considers that disclosure of this advice, would or would be likely, to lead to less frank advice being provided in future, and if this occurred, it would impede the Authority's decision-making in FOI matters.
128. The Commissioner also accepts that Ministers and officials must have a private space in which to freely consider this advice, in order to reach an informed conclusion. He agrees that disclosure of the withheld information would, or would be likely, to inhibit officials from providing frank advice, and if this occurred it would significantly hamper the Authority's ability to fully consider the impact or consequences of any potential action taken in response to one of the Commissioner's decision notices.
129. He has taken account of the Applicant's comments regarding the Authority's wish to avoid embarrassment, and his view that embarrassment should not be a factor when considering the public interest test. The Commissioner agrees that embarrassment is not a valid argument in terms of the public interest test, and would like to reassure the Applicant that he has reached his view on the public interest in this case, without giving any thought as to whether or not the Authority would suffer embarrassment as a result of disclosure.
130. In all of the circumstances of the case, therefore, the Commissioner finds that where he has found that the exemption in 30(b)(i) of FOISA has been correctly applied, the public interest in maintaining the exemption outweighed that in making the information available. He therefore concludes that the Authority was entitled to withhold the information under section 30(b)(i) of FOISA.

Section 30(b)(ii) of FOISA

131. The Authority is withholding some information in documents 11 and 20 under section 30(b)(ii) of FOISA.
132. Section 30(b)(ii) provides that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
133. As is the case with the exemption contained in section 30(b)(i), the chief consideration when applying the exemption in section 30(b)(ii) is not whether the information constitutes opinion or views, but whether the disclosure of that information would, or would be likely to, inhibit substantially the exchange of views.

The Authority's submissions

134. The Authority submitted that it was continuing to withhold information in documents 11 and 20 under section 30(b)(ii) of FOISA. It explained that document 11 sets out an exchange between officials during the drafting process of the Ministerial submission set out in document 7. It further submitted that document 20 detailed the FOI Unit's initial views on the points raised in a FOI appeal case for further discussion with policy officials. The Authority argued that the information withheld under this exemption comprised candid views exchanged between Scottish Government officials discussing the handling of an FOI appeal and Decision 083/2021.
135. As with the exemption at 30(b)(i), the Authority argued that officials must be able to exchange views in a free and frank manner to ensure that all options are properly considered, and that decisions taken on the handling and responses have taken account of all necessary issues. It maintained that, as with section 30(b)(i), all propositions, including those that are likely to be discarded must be fully tested and discussed.
136. The Authority argued that its ability to test robustly proposed positions before using them publicly would be compromised substantially if every preliminary thought that had been recorded had to be disclosed. If this occurred, the Authority submitted that officials would be far less likely to engage in frank discussions that fully tested all propositions and options.
137. The Authority argued that disclosing the content of these communications is likely to result in discussions about FOI handling being less detailed, which would diminish the quality of the advice provided to Ministers and officials. It submitted that Scottish Government officials would be inhibited from providing their candid views in future, if this information were to be disclosed.

The Commissioner's view on the exemption

138. The Commissioner has considered all of the submissions made by the Authority, along with the withheld information under consideration.
139. The Commissioner considers that the exemption cannot be upheld in relation to some of the information in document 11, namely the last line in paragraph 3, and the whole of paragraph 4. The Commissioner also finds that the exemption does not apply to all of the information redacted from bullet points 1, 3 and 4, in document 20. In each instance, he does not find the withheld information to be particularly sensitive, nor does he accept that its disclosure would prevent individuals from sharing their views in future. As he finds that the exemption is not engaged, and as no other exemptions have been applied to this information, he requires the Authority to disclose to the Applicant the information that he has found not exempt under section 30(b)(ii) of FOISA.

140. The Commissioner accepts, however, that officials who have responsibility for FOI matters, including responses and appeals to the Commissioner, will, on occasion require a private space to discuss matters freely and frankly, particularly when those matters are of a sensitive nature.
141. The Commissioner will not go into detail for each case where he finds the exemption applies, but would note that where he has upheld the exemption, it is because he is satisfied that disclosure would lead to the harm claimed by the Authority.
142. The Commissioner considers that disclosure of this information would be likely to stifle the frankness and candour of comments on similarly sensitive issues in future and would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. The Commissioner is therefore satisfied that this information is exempt from disclosure under section 30(b)(ii) of FOISA. He will now go on to consider the application of the public interest test in section 2(1)(b) of FOISA.

Public interest test - section 30(b)(ii)

143. As noted above the exemption in section 30(b)(ii) is subject to the public interest test required by section 2(1)(b) of FOISA.

The Authority's submissions on the public interest

144. The Authority recognised that there was a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. It also acknowledged the public interest in how FOI requests are handled by the Scottish Government.
145. However, the Authority argued that these factors were outweighed by the public interest in allowing Scottish Government officials to have a private space where views may be exchanged in as free and frank a manner as possible. The Authority submitted that it was important to protect some private space, while still acknowledging the general principle of openness, to allow all options to be fully and properly discussed. It maintained that this was to the overall benefit of good decision making, and to ensure that the handling of FOI requests was discussed and developed on as robust a basis as is possible.
146. The Authority contended that the public interest lay in upholding the exemption.

The Applicant's submissions on the public interest

147. The Applicant argued that it was in the interests of openness and transparency, particularly on an issue regarding the Salmond Inquiry and the probe into Mr Salmond's behaviour, for the redacted information to be made public. He submitted that he was aware of several other decisions from the Commissioner, including one with the Court of Session following a judicial review petition from Scottish Ministers, that clearly provide a precedent for disclosing this type of information.
148. The Applicant argued that as this specific request was focused on the Scottish Government's handling of a FOI request which was judged to be unlawful, it was overwhelmingly clear that the public interest lay with full transparency and accountability and not in protecting the reputation of the Scottish Government and its civil servants.

The Commissioner's view on the public interest - section 30(b)(ii)

149. The Commissioner has considered carefully all the public interest arguments he has received.
150. He recognises that there is a genuine public interest in allowing understanding the processes undertaken by the Authority in fulfilling its FOI functions. The Applicant is correct to emphasise a strong public interest in transparency in the Authority's handling of a FOI request, particularly one which was successfully appealed to his office.
151. However, the Commissioner also recognises the public interest in a public authority being able to hold internal discussions and debate in a private space. He acknowledges that the ability to do so, safe in the knowledge that information will not routinely be publicly disclosed, will be required on occasion to allow open and frank exchanges to support informed decision-making. The Commissioner accepts there is no public interest in disclosing information that would limit such future discussion or debate, particularly where such disclosure would, as he has already concluded, inhibit substantially significantly the quality of the Authority decision-making.
152. On balance, therefore, the Commissioner concludes that the public interest in maintaining the exemption in section 30(b)(ii) outweighs that in disclosure of this particular information.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that by correctly withholding information under 26(c), 30(b) and (c), 35(1)(g) and 36(1) of FOISA, the Authority complied with Part 1.

However, by wrongly withholding some information under section 30(b)(i) and (ii) of FOISA, the Authority failed to comply with section 1(1) of Part 1.

The Commissioner therefore requires the Authority to provide the Applicant with the information that was wrongly withheld under section 30(b)(i) and (ii) of FOISA by **24 June 2024**.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

David Hamilton
Scottish Information Commissioner

8 May 2024

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - ...
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - (b) section 26;
 - ...

26 Prohibitions on disclosure

Information is exempt information if its disclosure by a Scottish public authority (otherwise than under this Act)-

- ...
- (c) would constitute, or be punishable as, a contempt of court.
- ...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

- ...
- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

...

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

...

- (g) the exercise by any public authority (within the meaning of the Freedom of Information Act 2000 (c.36)) or Scottish public authority of its functions for any of the purposes mentioned in subsection (2);

...

- (2) The purposes are-

...

- (b) to ascertain whether a person is responsible for conduct which is improper;

...

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify -
 - (i) the request for information to which the requirement for review relates;

- (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
- (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

73 Interpretation

In this Act, unless the context requires a different interpretation –

“the Commissioner” means the Scottish Information Commissioner;

“body” includes an unincorporated association;

“decision notice” has the meaning given by section 49(5);

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“enforcement notice” has the meaning given by section 51(1);

“exempt information” means information which is so described in any provision of Part 2;

“fees notice” has the meaning given by section 9(1);

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

“information notice” has the meaning given by section 50(1);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c.26);

“the Parliamentary corporation” means the Scottish Parliamentary Corporate Body;

“publication scheme” has the meaning given by section 23(1)(a);

“refusal notice” has the meaning given by section 16(1) (including that section as read with section 18(2));

“requirement for review” has the meaning given by section 20(2);

“Scottish public authority” has the meaning given by section 3(1);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c.30) but includes an instrument made under an Act of the Scottish Parliament; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971 (c.80), is a bank holiday in Scotland.