

Cabinet Secretary for the Economy, Jobs and Fair Work

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002  
INTERVENTION BY THE SCOTTISH INFORMATION COMMISSIONER INTO SCOTTISH  
GOVERNMENT FOI PRACTICE  
INFORMATION ABOUT INDIVIDUAL CASES**

**Introduction**

1. As you are aware, as part of his interview with you, the Scottish Information Commissioner wishes to discuss three specific FOI cases.
2. This minute provides an assessment of the matters that the Commissioner may wish to discuss, based on the information contained in the case file and the FOI tracker.
3. For each case, your private office will provide copies of the advice that went to you on publication, the responses from your office, and the correspondence that was issued to the requester.
4. The Commissioner has not indicated to us the specific matters that he wishes to discuss. What follows is our assessment, based on the case file and the FOI tracker.

**FOI/17/00406**

*Details of the case*

Name of requester	[redacted], Liberal Democrat researcher
Date of request	13 February 2017
Directorate	Economic Development
Lead official	[redacted]
Stage concluded	Request

*Timeline*

<u>Date</u>	<u>Event</u>
13 February 2017	<i>Request received</i> Request for correspondence exchanged with Scottish Funding Council between 1 June 2015 and 12 February 2017 re the Enterprise and Skills Review; and a list of dates of all meetings between SG officials and Ministers and the SFC at which the Review was discussed. [On 6 February the requester had submitted request FOI/17/00315, which was identified as substantially overlapping with this one. A single response to both requests was prepared.]
3 March 2017	Case handler issued a final check to business areas for information in respect of both requests.
10 March 2017	Case handler issued holding response to requester about both requests, advising “it is taking longer than anticipated to deal with

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	your requests due to the number of business areas across the Scottish Government holding relevant information”.
10 March 2017	Draft responses (covering these two cases and related case FOI/17/00316 from a different Lib Dem researcher) sent to special advisers for comment.
13 March 2017	<i>20 day deadline for responding to the request</i>
20 March 2017	PS/Special advisers advised case handler of Stewart Maxwell’s views. He sought to have four attachments withheld under section 29(1)(a) (formulation or development of SG policy), a letter withheld under section 30(b)(ii) (free and frank exchange of views) and redactions to an email, also under section 30(b)(ii).
20 March 2017	Case handler revised response in accordance with Stewart Maxwell’s views and resubmitted to special advisers. Also sent to Mr Brown and DFM for clearance.
21 March 2017	PS/Special advisers advised that if the changes had been made the response could go as Mr Brown had cleared it.
22 March 2017	Mr Brown’s private office advised that he had only cleared FOI/17/00316 and that FOI/17/00315 and 00406 were still under consideration.
2 May 2017	Case handler sought an update from Mr Brown’s private office.
17 May 2017	Mr Brown’s private office advised that he was content for the response to be issued.
17 May 2017	<i>Response sent to requester</i>

*Potential matters for discussion*

- Cause of the delay in responding to the request

**FOI/17/00844**

*Details of the case*

Name of requester	<b>[redacted]</b> , Sunday Post
Date of request	16 March 2017
Directorate	Transport Scotland
Lead official	<b>[redacted]</b>
Stage concluded	Request

*Timeline*

<u>Date</u>	<u>Event</u>
16 March 2017	<i>Request received</i> Request for a copy of the agreement which saw Transport Scotland/the Scottish Government buy Glasgow Prestwick Airport from Infratil for £1 in 2013, including any contract or letter of agreement which indicates the terms of the deal.
5 April 2017	Case handler completed redactions of the Agreement for the sale and purchase of shares.
6 April 2017	Case handler consulted Glasgow Prestwick Airport on proposed release of information and intended redactions.

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7 April 2017	Case handler consulted Infratil's legal advisers (in New Zealand) on proposed release of information and intended redactions.
12 April 2017	Case handler confirmed that the redactions had been adjusted as requested by Infratil.
13 April 2017	<i>20 day deadline for responding to the request</i>
21 April 2017	Draft response sent to special advisers for comment, proposing to release the document with redactions in terms of under sections s.33(1)(b) (Commercial Interests), s.31(1) (National Security) and s.38(1)(b) (Personal Data).
28 April 2017	Special advisers' private office confirmed that special advisers were content for the draft response to be sent for Ministerial clearance.
28 April 2017	Draft response sent to Mr Brown for clearance.
17 May 2017	Mr Brown's private office indicated that he was content, so long as the request had been thoroughly checked.
22 May 2017	<i>Response sent to requester</i>

*Potential matters for discussion*

- Causes of the delays in responding to the request

**FOI/17/01567**

*Details of the case*

Name of requester	<b>[redacted]</b> , The Guardian
Date of request	6 July 2017
Directorate	Transport Scotland
Lead official	<b>[redacted]</b>
Stage concluded	Review

*Timeline*

<u>Date</u>	<u>Event</u>
6 July 2017	<i>Request received</i> Request for all recorded information from 1 Jan 2015 in connection with Prestwick Airport or Prestwick Spaceport which names or refers to a number of individuals/bodies including (but not limited to) Donald Trump, the Trump Organisation, Trump Turnberry, and the US Government.
27 July 2017	Case handler consulted Glasgow Prestwick Airport on document containing extracts of above information (19 pages) and proposed redactions, together with two documents where GPA had previously released information.
28 and 31 July 2017	Case handler consulted third parties whose correspondence would be released in response to the request ( <b>[redacted]</b> , GPA; <b>[redacted]</b> , North Ayrshire Council; <b>[redacted]</b> , UK Space Agency).
1 August 2017	Case handler sent draft response to special advisers for comment, noting that it had taken longer than anticipated to find all of the information.

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1 August 2017	Mr Brown's private office sought update from case handler, who confirmed draft response was going to special advisers and that he would send it to the Cabinet Secretary once he had their comments.
2 August 2017	Case handler sent holding response to requester.
3 August 2017	<i>20 day deadline for responding to the request</i>
3 August 2017	Case handler sent draft response to Cabinet Secretary for clearance, explaining that special advisers had commented (but those comments are not on the file).
14 August 2017	Mr Brown's private office advised the case handler of 5 queries raised by Mr Brown.
15 August 2017	Case handler responded to Mr Brown's query and adjusted the response to take them into account.
30 August 2017	Mr Brown's private office confirmed he was now content for the response to be issued.
31 August 2017	<i>Response sent to requester</i>
6 September 2017	<i>Review sought by requester</i>
8 September 2017	Reviewer considered review request and decided two of the five points raised should be treated as a fresh FOI request.
15 September 2017	Case handler prepared draft request response to the two points.
18 September 2017	Reviewer circulated draft review response to business area and FOI Unit, outlining next steps to ensure the draft would be ready to send to special advisers on 21 September.
22 September 2017	FOI Unit responded to reviewer with advice on draft response.
25 to 27 September 2017	FOI Unit and reviewer adjusting draft response.
29 September 2017	Reviewer sent draft response to special advisers for comment.
3 October 2017	<i>Deadline for responding to review</i>
3 October 2017	PS/Special advisers advised that Stewart Maxwell was content for the response to go for Ministerial clearance.
3 October 2017	Reviewer sent draft response to Cabinet Secretary for clearance.
6 October 2017	Reviewer sent holding response to requester.
27 October 2017	Mr Brown had a telephone conversation with the reviewer about part of the request. His private office followed up with his comments on the remainder of the papers.
29 October 2017	Reviewer responded to Mr Brown's comments.
31 October 2017	Mr Brown's private office responded to the reviewer as follows:  "Thanks for this – Mr Brown is now content but would like spads to re-check. He has also suggested that we have comms lines prepared for when this does go out."
31 October 2017	Reviewer re-sent draft response to special advisers.
3 November 2017	Special advisers' private office indicated that Stewart Maxwell thought two further points should be redacted.
4 November 2017	Reviewer confirmed to business area that Ministerial and special adviser "clearance" had been obtained, and gave instructions for the final redactions to be carried out.
8 November 2017	Reviewer asked case handler to supply a list of acronyms queried by the requester.

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8 November 2017	Response issued to requester.
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*Potential matters for discussion*

- Causes of the delays in responding to the original request
- Causes of the delays in responding to the review request

**Conclusion**

5. You are invited to note the information in this minute.

[redacted]  
FOI Unit  
[redacted]

**15 May 2018**

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

Liz Ditchburn  
Mary McAllan  
Roy Brannen  
David Rogers  
Ian Davidson  
[redacted]  
[redacted]  
Liz Lloyd  
Stuart Nicolson  
Stewart Maxwell  
John Somers  
[redacted]  
[redacted]

Target - 85%

Target - 90%

Directorate	Apr-17	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec-17	Jan-18	Feb	Mar-18	% on time Apr 17 - Mar 18	Total due
SCOTTISH DEVELOPMENT INTERNATIONAL		100% (1)		100% (3)									100%	4
ACCOUNTANT IN BANKRUPTCY			100% (10)	100% (3)	100% (2)	100% (1)					100% (6)	100% (1)	100%	23
CHIEF ECONOMIST	100% (8)	83% (6)			100% (1)	100% (3)	100% (3)	60% (5)	100% (2)	100% (4)	100% (7)	100% (5)	93%	44
ECONOMIC DEVELOPMENT	100% (3)	33% (9)	100% (1)	86% (14)	100% (4)	100% (6)	67% (6)	78% (9)	100% (6)	100% (2)	100% (4)	83% (18)	82%	82
FAIR WORK, EMPLOYABILITY AND SKILLS		50% (2)	100% (1)	100% (1)	100% (1)				100% (4)	100% (2)		60% (5)	81%	16
ECONOMIC POLICY UNIT							0% (1)	25% (4)	100% (3)	50% (2)	100% (1)	100% (5)	69%	16
ENERGY AND CLIMATE CHANGE	3% (31)	25% (8)	100% (2)	100% (18)	100% (2)	100% (2)	100% (6)	100% (5)	100% (5)	100% (1)	90% (10)	100% (5)	61%	95

Figures show percentage answered on time and (monthly total)

Cabinet Secretary for Health and Sport

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002  
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**Introduction**

1. As you are aware, as part of his interview with you, the Scottish Information Commissioner wishes to discuss two specific FOI cases.
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**FOI/17/00947**

*Details of the case*

Name of requester	[redacted], Herald and Times Group
Date of request	6 April 2017
Directorate	Communications, Ministerial Support and Facilities
Lead official	[redacted]
Stage concluded	Review (original decision overturned)

*Timeline*

<u>Date</u>	<u>Event</u>
6 April 2017	<i>Request received</i> Request for reports received by Paul Gray's office from the NHS Chief Executives' Group from 2013 to September 2016.
[date unknown]	Two documents were identified as being within scope and Paul Gray was content that they be released.
3 May 2017	Case handler sought advice from FOI Unit because the documents had previously been withheld in relation to other FOI requests. FOI Unit advised that there was no reason to withhold, and that the previously suggested exemptions "certainly wouldn't be applicable". Those exemptions related to the formulation of Scottish Government policy (section 29(1)(a)) and Ministerial communications (section 29(1)(b)).

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4 May 2017	Draft response sent to Ms Robison for clearance. It proposed to release both documents, noting Paul Gray was content.
8 May 2017	<i>20 day deadline for responding to the request</i>
18 May 2017	Requester sought an update.
22 May 2017	Paul Gray's office sought further views from officials on whether the documents should be released or not.
23 May 2017	Anne Aitken, Head of Strategic Change Division (Health Workforce and Strategic Change Directorate) responded in relation to the Board Governance paper, saying:  <b>[redacted]</b>
25 May 2017	Ms Robison's private office responded to the submission of 4 May as follows:  <b>[redacted]</b>
25 May 2017	Officials were asked for contributions to explain the application of the exemption in section 29(1)(a), in light of Ms Robison's views.
30 May 2017	Responses received from officials responsible for both documents within scope of the request.
31 May 2017	<i>Response sent to requester</i> Both documents withheld.
1 June 2017	<i>Review sought by requester</i> Requester contended that the balance had been struck wrongly in applying the public interest test. She also noted that the exemption had been applied in a blanket fashion, without explaining why it applied to each document.
7 June 2017	Reviewer appointed.
12 June 2017	Reviewer concluded that both documents should be released and sought advice from FOI Unit.
14 June 2017	FOI Unit responded, observing that the reviewer's conclusions were in line with its advice on the initial request.
16 June 2017	Reviewer sent draft submission recommending release to Ms Robison's private office.
21 June 2017	PS/Special advisers responded advising that Davie Hutchison had considered and remained "of the view that neither of the 2 documents should be released – they should be exempted under s.29.(1)(a)". He commented:  <b>[redacted]</b>
21 June 2017	The FOI Unit advised that the Commissioner would not accept the application of the exemption in a blanket fashion, and that its view was that there were insufficient grounds to justify withholding the documents entirely.
21 June 2017	PS/Special advisers then proposed that information in the documents should be redacted instead.
29 June 2017	<i>Deadline for responding to review</i> <i>Review response issued to requester</i> Finance paper released with redactions. Board Governance paper released unredacted.

*Potential matters for discussion*

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- Cause of the delay in responding to the original request
- Thinking on the blanket application of the section 29(1)(a) exemption at request stage and in initial consideration of the review
- Reasons for the decision to withhold the documents, given the differences of view between those involved in handling the case

**FOI/16/01545**

*Details of the case*

Name of requester	[redacted], Daily Record
Date of request	12 October 2016
Directorate	Population Health
Lead official	[redacted]
Stage concluded	Review (original decision overturned)

5. The Minister involved in this case was Ms Campbell, but the topic is within Ms Robison's portfolio responsibilities.

*Timeline*

<u>Date</u>	<u>Event</u>
12 October 2016	<i>Request received</i> Request for details from between April 2015 and October 2016 of any meetings and correspondence between [redacted] Scottish Professional Football League and SG officials in relation to the issue of sectarianism and anti-social and offensive behaviour in Scottish professional football. Requester also sought agendas, minutes and email correspondence on the same topic.
9 November 2016	<i>20 day deadline for responding to the request</i>
9 November 2016	Case handler sent a draft response to special advisers for advice (the email erroneously says "clearance"). It proposed that the agenda of a meeting and four emails arranging a meeting between the SPFL and Ministers should be released, and that two briefings should be withheld on the basis of the section 29(1)(a) exemption (formulation of SG policy).
11 November 2016	Davie Hutchison telephoned case handler, explaining that he considered that much of this material was outwith the scope of the request and asking for it to be removed.
13 November 2016	Requester sought an update.
14 November 2016	Special advisers' private office passed on further comments on the draft response from Davie Hutchison to the case handler.
15 November 2016	Request sent to Ms Campbell for clearance.
16 November 2016	Ms Campbell confirmed that she was content.
16 November 2016	<i>Response sent to requester</i>
21 November 2016	<i>Review sought by requester</i> [Request for review not on file]

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15 and 19 December 2016	Reviewer sought advice from FOI Unit. FOI Unit gave advice that her conclusions would involve substituting a new decision for the original, and releasing additional information.
<i>20 December 2016</i>	<i>Deadline for responding to review</i>
20 December 2016	Draft review response sent to special advisers for comment. The reviewer and FOI Unit took the view that the material withheld should be released.
21 December 2016	PS/Special advisers advised that Davie Hutchison continued to wish to withhold the material proposed for release as being out of scope.
22 December 2016	FOI Unit set out its detailed reasoning in support of disclosure.
9 January 2017	FOI Unit sought an update from PS/Special advisers.
23 January 2017	FOI Unit met Davie Hutchison to discuss the case.
24 January 2017	FOI Unit updated reviewer on outcome of discussion with Davie Hutchison, commenting:  <p align="center">“<b>[redacted]</b> So he has agreed that the information in pages 1 to 8 of your scanned documents should be released, subject to the redaction of “Elections and potential new Ministers – opportunities and challenges” and “Measuring football performance/ success/ outcomes” from the 18 April 2016 agenda (on page 7). You’ll need to apply the section 30(c) exemption to cover this – I’ve added appropriate wording to your draft review response.”</p>
24 January 2017	Reviewer revised draft response and sent it to Ms Campbell for clearance.
31 January 2017	Ms Campbell sought clarification on whether release would set a precedent and asked whether the letter was unnecessarily apologetic.
1 February 2017	FOI Unit confirmed that no FOI response set a precedent for future cases and reworded the letter so far as it mentioned an incorrectly-applied exemption.
3 February 2017	Ms Campbell clarified that she thought the paragraph about application of the public interest test, which she thought too detailed.
6 February 2017	FOI Unit advised that the paragraph in question was the minimum required to fulfil the legal requirement to apply the public interest test, and so could not be removed.
<i>13 February 2017</i>	<i>Review response issued to requester</i>

*Potential matters for discussion*

- Reasons behind the differences of view about the scope of the request and what should be released
- The time taken for decisions to be reached at review stage

**Conclusion**

6. You are invited to note the information in this minute.

**[redacted]  
FOI Unit**

[redacted]

**15 May 2018**

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Public Health and Sport					X

Paul Gray  
Barbara Allison  
Andrew Scott  
David Rogers  
Ian Davidson  
[redacted]  
[redacted]  
Liz Lloyd  
Stuart Nicolson  
Davie Hutchison  
John Somers  
[redacted]  
[redacted]

**Target - 85%**

**Target - 90%**

Directorate	Apr-17	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec-17	Jan-18	Feb	Mar-18	% on time Apr 17 - Mar 18	Total due
CHIEF NURSING OFFICER			100% (1)		100% (1)				100% (1)				100%	3
HEALTH WORKFORCE AND STRATEGIC CHANGE		100% (1)	67% (3)	0% (1)	100% (1)	100% (2)		100% (3)		100% (1)	100% (1)		85%	13
HEALTH AND SOCIAL CARE INTEGRATION		50% (2)	100% (1)			100% (2)	100% (2)	33% (3)	100% (1)	100% (1)	100% (2)	100% (4)	83%	18
POPULATION HEALTH	50% (2)	50% (6)	100% (1)	100% (2)	75% (4)	100% (4)	88% (8)	71% (7)	67% (6)	100% (2)	67% (3)	100% (6)	78%	51
HEALTHCARE QUALITY AND IMPROVEMENT			100% (1)	100% (1)		100% (1)	100% (1)	100% (1)	33% (3)		100% (1)	67% (3)	75%	12
OFFICE OF THE CHIEF EXECUTIVE NHSSCOTLAND			100% (1)	100% (1)							0% (1)		67%	3
HEALTH FINANCE	3% (35)	100% (1)	100% (3)		80% (5)	100% (3)	100% (1)	33% (3)	100% (4)		100% (1)	67% (3)	36%	59
HEALTH PERFORMANCE AND DELIVERY	0% (1)	0% (1)	100% (1)	0% (1)		0% (2)			0% (1)	100% (1)	100% (2)	0% (1)	36%	11

Figures show percentage answered on time and (monthly total)

Stewart Maxwell

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4. The Commissioner has not indicated to us the specific matters that he wishes to discuss. What follows is our assessment, based on the case file and the FOI tracker.

**FOI/16/02147**

*Details of the case*

Name of requester	[redacted], Liberal Democrat researcher
Date of request	28 November 2016
Directorate	Economic Development
Lead official	[redacted]
Stage concluded	Appeal (withdrawn following release of further information)

*Timeline*

<u>Date</u>	<u>Event</u>
28 November 2016	<i>Request received</i> Request for correspondence with Highlands and Islands Enterprise re the Enterprise and Skills Review; and minutes of meetings and correspondence between SG the HIE Board about the Review.
21 December 2016	Case handler acknowledged the request and also sent a holding response advising that it was "taking longer than expected to deal with your request due to the need to engage a range of areas across the Scottish Government to determine what relevant information we hold". Case handler also noted that given the Christmas holiday period he hoped to respond in mid-January once individuals who might hold information had returned from leave.
28 December 2016	<i>20 day deadline for responding to the request</i>
26 January 2017	Requester sought update.

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30 January 2017	Case handler advised requester that response might be expected in early February once internal review and clearance was complete.
6 February 2017	Case handler sent draft response to special advisers for comment.
6 February 2017	Requester sought update, advising that he was minded to refer the matter to the Commissioner.
6 February 2017	Case handler sent further holding response to requester.
9 and 10 February 2017	Further correspondence between case handler and requester re timescales for response.
10 February 2017	Case handler met Stewart Maxwell to discuss case and subsequently revised draft response, which was resent to special advisers for comment.
14 February 2017	Stewart Maxwell suggested further information be withheld from the response.
15 February 2017	Case handler submitted further revised draft response to Stewart Maxwell.
17 February 2017	Stewart Maxwell confirmed he was content for draft response to go for Ministerial clearance.
17 February 2017	Case handler sent draft response to Mr Brown for clearance.
21 February 2017	Mr Brown's private office responded (on Tuesday) as follows:  "Mr Brown is content with this response – I assume this won't be issued until Friday?"
21 February 2017	Requester sought update on timescales.
21 February 2017	<i>Requester sought review of failure to respond</i>
24 February 2017	<i>Response sent to requester</i>
27 February 2017	Case handler acknowledged request for review and sent draft review response to FOI Unit for comment.
28 February 2017	FOI Unit provided advice on how to respond to a request for a review of a failure to respond and revised the draft response.
1 March 2017	<i>Response sent to requester</i>
13 March 2017	<i>Requester appealed to Scottish Information Commissioner</i> Requester complained that public interest test had been misapplied, and that redaction was excessive. He also complained about the time taken to respond, including the clearance process.
24 March 2017	Commissioner notified SG that appeal had been validated and requested that Stage 1 appeal documentation be submitted by 7 April.
12 April 2017	FOI Unit provided Stage 1 appeal documentation to Commissioner.
9 May 2017	FOI Unit asked case handler for information to complete Stage 2 submission (detailed comments on the approach taken to handling the request) to the Commissioner, due by 23 May.
23 May 2017	FOI Unit advised that it had secured an extension to the deadline for the submission to the Commissioner (to 9 June).
7 to 16 June 2017	Business area liaising with Mr Brown's private office over the proposed submission to the Commissioner and on what additional information could be released to the requester.
16 June 2017	FOI Unit sent final submission to Commissioner noting that more information would be released.
20 June 2017	Case handler sent further response to requester releasing more information.
7 July 2017	Requester withdrew appeal to Commissioner.

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Potential matters for discussion

- Cause of the delay in responding to the request
- Reasons for requesting that the response be issued on a particular day
- Reasons for withholding information at the original request stage, given the extensive disclosure that took place on appeal

FOI/17/00406

Details of the case

Name of requester	[redacted], Liberal Democrat researcher
Date of request	13 February 2017
Directorate	Economic Development
Lead official	[redacted]
Stage concluded	Request

Timeline

<u>Date</u>	<u>Event</u>
13 February 2017	<i>Request received</i> Request for correspondence exchanged with Scottish Funding Council between 1 June 2015 and 12 February 2017 re the Enterprise and Skills Review; and a list of dates of all meetings between SG officials and Ministers and the SFC at which the Review was discussed. [On 6 February the requester had submitted request FOI/17/00315, which was identified as substantially overlapping with this one. A single response to both requests was prepared.]
3 March 2017	Case handler issued a final check to business areas for information in respect of both requests.
10 March 2017	Case handler issued holding response to requester about both requests, advising “it is taking longer than anticipated to deal with your requests due to the number of business areas across the Scottish Government holding relevant information”.
10 March 2017	Draft responses (covering these two cases and related case FOI/17/00316 from a different Lib Dem researcher) sent to special advisers for comment.
13 March 2017	<i>20 day deadline for responding to the request</i>
20 March 2017	PS/Special advisers advised case handler of Stewart Maxwell’s views. He sought to have four attachments withheld under section 29(1)(a) (formulation or development of SG policy), a letter withheld under section 30(b)(ii) (free and frank exchange of views) and redactions to an email, also under section 30(b)(ii).
20 March 2017	Case handler revised response in accordance with Stewart Maxwell’s views and resubmitted to special advisers. Also sent to Mr Brown and DFM for clearance.

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21 March 2017	PS/Special advisers advised that if the changes had been made the response could go as Mr Brown had cleared it.
22 March 2017	Mr Brown's private office advised that he had only cleared FOI/17/00316 and that FOI/17/00315 and 00406 were still under consideration.
2 May 2017	Case handler sought an update from Mr Brown's private office.
17 May 2017	Mr Brown's private office advised that he was content for the response to be issued.
17 May 2017	<i>Response sent to requester</i>

*Potential matters for discussion*

- Cause of the delay in responding to the request

**Conclusion**

5. You are invited to note the information in this minute.

[redacted]  
FOI Unit  
[redacted]

**15 May 2018**

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			Portfolio Interest	Constit Interest	General Awareness

Liz Ditchburn  
Mary McAllan  
David Rogers  
Ian Davidson  
[redacted]  
[redacted]  
Liz Lloyd  
Stuart Nicolson  
Stewart Maxwell  
John Somers  
[redacted]  
[redacted]

Colin McAllister

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**FOI/15/02007**

*Details of the case*

Name of requester	[redacted], Labour researcher
Date of request	26 November 2015
Directorate	Financial Strategy
Lead official	[redacted]
Stage concluded	Decision issued by Commissioner

*Timeline*

<u>Date</u>	<u>Event</u>
26 November 2015	<i>Request received</i> Request for information about attendees, agenda, minutes and briefing re meetings between Alex Salmond and [redacted] on 27 July and 21 October 2013, and 6 March 2014. [Request received together with 02008 (asking similar questions about meetings between [redacted] and Nicola Sturgeon) and 02009 (asking similar questions about meetings between [redacted] and John Swinney). All three requests responded to in a collated response.]
23 December 2015	Case handler issued holding response to requester advising that it would not be possible to respond within the deadline. No reason given.
29 December 2015	<i>20 day deadline for responding to the request</i>

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19 January 2016	Case handler sent draft response to Cabinet Secretary for Infrastructure, Investment and Cities (Mr Brown)
19 January 2016	Mr Brown's office advised that the response would have to be cleared instead by the First Minister and DFM and seen by special advisers.
20 January 2016	Case handler sent draft response to FM, DFM and special advisers.
?22 January 2016	PS/Special advisers informed case handler that the draft response was not yet ready to be considered by special advisers and set out detailed commentary on what was required before resubmission.
22 January 2016	Case handler sought advice from FOI Unit on PS/Special advisers' comments.
26 January 2016	FOI Unit provided detailed comments to case handler on revising the draft response.
28 January 2016	Requester sought update and case handler issued second holding response. No reason given.
5 February 2016	Case handler sent revised draft response to special advisers for comment.
8 February 2016	PS/Special advisers reverted to case handler with further comments on changes required before submitting to special advisers.
8 February 2016	Case handler sought further advice from FOI Unit on PS/Special advisers' comments.
9 February 2016	FOI Unit responded to case handler, explaining how to notify third parties and how to carry out redactions in the format requested by PS/Special advisers.
10 February 2016	Case handler notified <b>[redacted]</b> of intended release of information.
7 March 2016	Case handler issued third holding response to requester, saying that the information was taking longer to gather than expected.
7 March 2016	Requester responded pointing out inconsistency with January holding response which had said a response would be available "in the next few days". Requester asked for a review if an estimated timescale for response could not be provided.
7 March 2016	Case handler advised special adviser (Colin McAllister) and FOI Unit of requester's response and asked for advice on handling.
7 March 2016	PS/Special advisers undertook to discuss with Colin McAllister. FOI Unit advised: <p align="center">"It would be good if we could either send a final response out quickly or at least give him a date, which is both close and achievable, when we will be able to reply. Otherwise we're going to have to treat his e-mail as a failure-to-respond review request, which will give him more reason to criticise the SG."</p>
8 March 2016	Case handler sought update from PS/Special advisers, who responded: <p align="center">"I have discussed further with Colin. It is difficult for Colin to give a date until he is aware of:</p> <ul style="list-style-type: none"> <li>• how <b>[redacted]</b> responded to the third party notification letter and;</li> <li>• your timeframe for notifying the former First Minister."</li> </ul>
9 March 2016	FOI Unit gave advice to PS/Special advisers on the question of third party notification.
11 March 2016	Case handler reverted to PS/Special advisers asking if the requester could be given 24 March as a date by which a response would be sent.

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11 March 2016	PS/Special advisers responded:  “I have discussed with Colin. Until Colin has seen and cleared the amended response I am afraid he thinks it is impossible to commit to a date for responding.”
11 March 2016	Case handler and PS/Special advisers discussed what was needed in order to get a further draft to Colin McAllister.
14 March 2016	FOI Unit provided further comments, dealing with each of the outstanding issues, and noted that the case would be discussed at a meeting with PS/Special advisers [a standing weekly meeting at which a range of cases would be discussed].
<i>18 March 2016</i>	<i>Requester sought review of failure to respond</i>
[18 March 2016	It appears that special advisers indicated they were content with the draft, though this is not apparent from the file. See the submission to Ministers on 21 March for only identifiable discussion of this.]
21 March 2016	Case handler asked for reviewer to be identified.
21 March 2016	Case handler sent draft response to FM and DFM for clearance, commenting:  “SPAds, who have had the draft responses for some time and who made a number of changes to the format, have now given clearance on Friday for the draft answer to be put to Ministers for approval today.”
22 March 2016	DFM’s private office advised that DFM was content with the response.
23 March 2016	FM’s private office clarified the documents being submitted with the draft response and sought a formatting change, which was supplied later that day.
4 April 2016	Case handler sought an update, noting that the review deadline was 10 days away.
5 April 2016	FM’s private office indicated that the case handler would be updated once private office heard back from FM. Private office also copied in FOI Unit to address the review of failure to respond point.
5 April 2016	FOI Unit advised on the correct template for use, noting that this was a technical change and should not affect the substance of the draft submitted to FM.
5 April 2016	Case handler put draft onto correct template and circulated to FOI Unit and FM’s private office.
5 April 2016	FOI Unit revised the draft to follow normal practice and indicated that otherwise it was fine from an FOI perspective.
6 April 2016	FM’s private office advised the case handler:  “FM has considered the proposed response and is content to clear this.  Grateful if you could work with FM/ DFM Comms and SPADs around handling of the release to the requester.”
<i>7 April 2016</i>	<i>Response sent to requester</i>
<i>14 April 2016</i>	<i>Requester appealed to Scottish Information Commissioner</i> Requester complained about the time taken to respond, the lack of explanation for the delay, and also about the response that much of the information requested was not held.
13 May 2016	Commissioner notified SG that the appeal had been validated.

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8 June 2016	Commissioner invited detailed response from SG, to be received by 23 June.
13 June 2016	FOI Unit and policy area agreed response to appeal and submitted it to Commissioner.
5 October 2016	<p align="center"><i>Decision issued by Commissioner</i></p> <p>The Commissioner concluded that the Ministers had been right to tell the requester that the information sought was not held.</p> <p>The Commissioner described the time taken to respond to the request as:</p> <p align="center">“unacceptable and an example of extremely poor practice by the Ministers. The Ministers have not provided the Commissioner with any reason for this delay, simply stating that it was ‘unfortunate’.”</p>

*Potential matters for discussion*

- Causes of the delay in responding to the request

**FOI/16/01335**

*Details of the case*

Name of requester	[redacted], The Guardian
Date of request	8 September 2016
Directorate	Strategy and Constitution
Lead official	[redacted]/ [redacted]
Stage concluded	Decision issued by Commissioner

*Timeline*

<u>Date</u>	<u>Event</u>
8 September 2016	<p align="center"><i>Request received</i></p> <p>Request for information about the status of the consultation exercise carried out by the Scottish government on a written constitution for an independent Scotland prior to the September 2014 independence referendum.</p>
26 September 2016	Draft response sent to Deputy Director, Constitution and UK Relations, for consideration.
30 September 2016	Case handler confirmed that consultation responses were to be published before the response was issued.
6 October 2016	<i>20 day deadline for responding to the request</i>
6 October 2016	Holding response issued to requester.
6 October 2016	<i>Requester sought review of failure to respond</i>
7 October 2016	FOI Unit provided advice to case handler on how to deal with reviewing the failure to respond.
20 October 2016	Case handler sent draft response to special advisers, noting again that consultation responses would be published before the response was issued.

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25 October 2016	Liz Lloyd contacted case handler to advise that Colin McAllister would consider the draft, and noting a previous request on the same topic. She also requested sight of the responses proposed for publication.
25 October 2016	Case handler responded with information about the responses and how to access them.
26 October 2016	FOI Unit provided advice to case handler on draft response to bring it into line with the failure to respond review response template.
2 November 2016	Case handler noted that Colin McAllister was considering the proposed consultation responses for publication.
2 November 2016	FOI Unit advised that the case had been discussed at a meeting with special advisers and that it was still under consideration, with a response to the case handler unlikely before 7 November. Given the deadline, FOI Unit recommended sending the draft for clearance by the Cabinet Secretary while noting that special advisers were still considering.
3 November 2016	<i>Deadline for responding to review</i>
3 November 2016	Holding response sent to requester.
4 November 2016	Case handler advised that special advisers were broadly content and that the draft response should go to Mr Mackay for clearance and FM for awareness.
4 November 2016	Case handler submitted draft response to Mr Mackay for clearance and to FM for awareness.
7 November 2017	<i>Requester appealed to the Scottish Information Commissioner</i>
14 November 2016	Mr Mackay's private office advised that he was content with the draft response.
14 November 2016	Liz Lloyd commented:  "I think we're still waiting FM clearance - can we ensure there's a comms discussion re lines before this issues"
14 November 2016	PS/FM was asked whether FM had seen the submission as sent for awareness, and whether she would be content to clear the draft response.
14 November 2016	Commissioner notified SG that appeal had been validated. The appeal related only to the procedural issue of failure to respond. Submissions were requested by 28 November 2016.
16 November 2016	Case handler submitted draft comms handling plan to special advisers, noting the appeal that had been received, a related request that was now late and proposing to respond on 18 November (Friday).
16 November 2016	Liz Lloyd responded:  "I'm not committing to it going out on Friday at this point. It'll go out when we've had the chance to ensure it's got a proper handling plan.  I can take some time on Friday morning to discuss, but don't have time slot tomorrow afternoon.  I haven't yet considered the actual responses to the consultation - Colin did - so will need the opportunity to do that as well"

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18 November 2016	[16 November emails suggested that a meeting between the case handler and special advisers was arranged for 18 November but there is no record of this on the file.]
22 November 2016	Case handler recapped the position and set out the next steps depending on whether or not the appeal was responded to on time.
25 November 2016	<i>Response sent to requester</i>
30 November 2016	Commissioner notified SG that the requester had withdrawn his appeal about failure to respond, and had submitted a substantive appeal about matters that he was dissatisfied about in the review response.
23 January 2017	Commissioner invited SG to provide detailed comments in response to the substantive appeal by 6 February.
6 February 2017	FOI Unit submitted detailed comments to Commissioner.
14 March 2017	<p align="center"><i>Decision issued by Commissioner</i></p> <p>The Commissioner concluded that the Ministers had been right to tell the requester that the information sought was not held.</p> <p>However, the Commissioner expressed surprise at the apparent lack of record keeping in this case.</p> <p>The Commissioner also noted the failure to respond to the request and the review request within the timescales allowed.</p>

*Potential matters for discussion*

- Causes of the delays in responding to the request and request for review
- The changing nature of the clearance process, with additional steps being added
- The impact of arranging a comms handling strategy on issuing the response

**FOI/17/01547**

*Details of the case*

Name of requester	[redacted], BBC
Date of request	3 June 2017
Directorate	Strategy and Constitution
Lead official	[redacted]
Stage concluded	Review (decision overturned)

*Timeline*

<u>Date</u>	<u>Event</u>
30 June 2017	<p align="center"><i>Request received</i></p> <p>Request for information about emails sent and received by 5 named special advisers in clearing FOI requests made by journalists to the SG between 1 Jan and 30 Jun 2017.</p>
11 July 2017	Case handler contacted special advisers' private office observing that the request should be treated as if it read "clearing FOI responses", on the basis that if a strict reading were taken then the

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	Commissioner would be severely critical of that approach on appeal. Case handler also requested a search for information within scope.
17 July 2017	Special advisers' private office responded with two emails found within scope.
18 July 2017	Case handler sent draft response to special advisers for comments. Case handler proposed to release redacted versions of the emails sent by private office, and to apply the section 25 exemption to two previously-supplied emails.
25 July 2017	Case handler sent revised draft response to Mr Fitzpatrick for clearance. Case handler noted that the response explained that the information sought was not held because special advisers do not clear FOI requests, and that this approach had been agreed with Colin McAllister.
25 July 2017	Mr Fitzpatrick's private office indicated that he was content to clear the draft response.
27 July 2017	<i>Response sent to requester</i>
28 July 2017	<i>20 day deadline for responding to the request</i>
1 August 2017	<i>Requester sought review</i>
7 August 2017	Reviewer contacted special advisers' private office setting out her view that the approach taken to the request was overly narrow (and in effect proposing to reinstate the case handler's original approach as sent to special advisers on 18 July). Also sought confirmation that the two emails were everything in scope.
7 August 2017	PS/Special advisers confirmed that the two emails were all of the information within scope.
10 August 2017	Reviewer sent draft response to special advisers, along the lines set out on 7 August, for comment.
11 August 2017	PS/Special advisers confirmed that Colin McAllister was content for the draft response to go for Ministerial clearance and asked for clarification about whether a document had been included in error.
11 August 2017	Reviewer confirmed that the document was within scope and had been correctly included.
14 August 2017	PS/Special advisers told FOI Unit that she would have to consider the document further and not to send the submission to the Minister meantime.
17 August 2017	FOI Unit sought update from PS/Special advisers.
17 August 2017	PS/Special advisers replied that she had but that Liz Lloyd now wished to discuss with Colin McAllister.
17 August 2017	PS/Special Advisers returned an amended draft and advised that, subject those changes being made, special advisers were content for the draft to go for Ministerial clearance.
21 August 2017	Reviewer send revised draft to FM and DFM for clearance.
23 August 2017	DFM's private office confirmed he was content to clear.
25 August 2017	FM's private office confirmed she was content to clear.
28 August 2017	<i>Response sent to requester</i>
30 August 2017	<i>Deadline for responding to review</i>

*Potential matters for discussion*

- Reasons for narrowing the interpretation of the request in the original response

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- The clearance process on review, including why different Ministers were involved (FM/DFM instead of Mr Fitzpatrick)

**FOI/17/02107**

*Details of the case*

Name of requester	James McEnaney, freelance journalist
Date of request	19 September 2017
Directorate	Learning
Lead official	<b>[redacted]</b>
Stage concluded	Review (decision overturned and information released)

*Timeline*

<u>Date</u>	<u>Event</u>
19 September 2017	<i>Request received</i>
20 September 2017	Case handler consulted <b>[redacted]</b> (University of Glasgow) on the release of a paper prepared by him on behalf of the Scottish Teacher Education Committee about Teach First.
25 September 2017	<b>[redacted]</b> confirmed he was happy for the paper to be disclosed.
26 September 2017	Case handler consulted Teach First on release of information [no response on file].
11 October 2017	Case handler sent draft response to special advisers for comment.
13 October 2017	Case handler contacted FOI Unit for advice, as Colin McAllister had asked for <b>[redacted]</b> paper to be withheld in full under section 29(1)(a) (formulation or development of SG policy), pointing to an ongoing procurement exercise for a new route into teaching.
16 October 2017	FOI Unit advised that the section 29(1)(a) exemption was not applicable as neither the paper nor the reason for withholding related to the formulation or development of SG policy. FOI Unit gave advice on attempting to apply section 30(c) (substantial prejudice to effective conduct of public affairs) while expressing doubt that the Commissioner would uphold it.  FOI Unit also pointed out that the exemption could not be applied in a blanket fashion, and at least the factual information annexed that was already in the public domain would have to be disclosed.
16 October 2017	Case handler sent draft response to DFM for clearance.
17 October 2017	<i>Response sent to requester</i>
17 October 2017	<i>20 day deadline for responding to the request</i>
17 October 2017	<i>Review sought by requester</i>  Reviewer complained about lack of context and failure to answer his specific questions, together with the extensive application of section 30(c) to the document disclosed.
1 November 2017	Reviewer set out proposed conclusions and sought advice from FOI Unit. Reviewer proposed to overturn the decision, provide the missing explanations and release the document in full as he was not persuaded that section 30(c) applied.

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1 November 2017	FOI Unit responded that it was in complete agreement and provided practical advice about formatting the response and submission to special advisers.
3 November 2017	Reviewer sought FOI Unit's views on draft response.
6 November 2017	FOI Unit indicated that it was content with the response and provided advice about notifying third parties.
7 November 2017	Reviewer sent draft response to DFM for clearance.
13 November 2017	DFM's private office indicated that he was content for the response to be issued.
14 November 2017	<i>Response sent to requester</i>

*Potential matters for discussion*

- Approach taken to applying exemptions.

**Conclusion**

5. You are invited to note the information in this minute.

[redacted]  
FOI Unit  
[redacted]

**16 May 2018**

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

DG Education, Communities and Justice  
DG Constitution and External Affairs  
DG Scottish Exchequer  
Fiona Robertson (Director of Learning)  
David Rogers (Director Strategy and Constitution)  
Director of Budget and Sustainability  
Ian Davidson  
[redacted]  
[redacted]  
Liz Lloyd  
Stuart Nicolson  
John Somers  
[redacted]  
[redacted]

Davie Hutchison

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002  
INTERVENTION BY THE SCOTTISH INFORMATION COMMISSIONER INTO SCOTTISH  
GOVERNMENT FOI PRACTICE  
INFORMATION ABOUT INDIVIDUAL CASES**

**Introduction**

1. As you are aware, as part of his interview with you, the Scottish Information Commissioner wishes to discuss four specific FOI cases.
2. This minute provides an assessment of the matters that the Commissioner may wish to discuss, based on the information contained in the case file and the FOI tracker.
3. For each case, the special advisers' private office will provide copies of the advice that went to you on publication, the responses from your office, and the correspondence that was issued to the requester.
4. The Commissioner has not indicated to us the specific matters that he wishes to discuss. What follows is our assessment, based on the case file and the FOI tracker.

**FOI/16/00813**

*Details of the case*

Name of requester	[redacted], Labour researcher
Date of request	20 May 2016
Directorate	Health Performance and Delivery
Lead official	[redacted]
Stage concluded	Request

*Timeline*

<u>Date</u>	<u>Event</u>
20 May 2016	<i>Request received</i> Request for information about correspondence between senior management and Board of NHS Lothian and Scottish Government re treatment time guarantee between 1 February 2016 and 19 May 2016.
1 June 2016	Case handler sought clarification of meaning of term "treatment time guarantee" i.e. whether it was to be given its legal definition or if it referred more widely to other waiting time standards and targets. <i>Clock stopped on time to respond until requester provided clarification</i>
28 June 2016	Case handler reminded requester of request for clarification and offered advice and assistance.
28 June 2016	Out of office response received from requester.

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4 July 2016	Requester clarified that his request was for all waiting standards and targets.
<i>4 July 2016</i>	<i>20 day deadline for responding to request restarted</i>
6 July 2016	Case handler requested that searches for information within scope be carried out.
11 and 15 July 2016	Case handler received nil returns from three policy areas.
<i>3 August 2016</i>	<i>20 day deadline for responding to the request</i>
8 August 2016	Case handler received 4 documents thought to be within scope from policy area.
8 August 2016	Case handler sent draft submission to special advisers, proposing to release the 4 documents with redactions for personal data and material outwith scope.
7 September 2016	Case handler sent draft submission to FOI Unit which made technical changes to ensure compliance and resubmitted to special advisers.
7 September 2016	FOI Unit followed up with special advisers' private office, commenting that the case handler was awaiting a response from special advisers and noting that technical changes had been made.
5 January 2017	FOI Unit met PS/Special advisers and Davie Hutchison to discuss.
9 January 2017	FOI Unit summarised discussion for case handler. It recorded Davie Hutchison's concerns about releasing preliminary figures which were unchecked for accuracy and which would likely conflict with the final confirmed figures that had since been published. FOI Unit proposed to redact that information in accordance with section 30(c) (prejudice to effective conduct of public affairs). FOI Unit attached revised draft for case handler to consider.
18 January 2017	Case handler confirmed that he was content with the amendments.
18 January 2017	FOI Unit resubmitted draft response to special advisers for comment.
26 January 2017	PS/Special advisers advised FOI Unit that Davie Hutchison wished the amount of information proposed to be sent in the Annex to the response to be reconsidered.
26 January 2017	FOI Unit confirmed that it had shortened the reasoning in the Annex.
8 February 2017	PS/Special advisers advised FOI Unit that Davie Hutchison had suggested redacting a paragraph from one document and withholding the other three entirely.
9 February 2017	FOI Unit advised that the changes requested would mean that the response did not properly comply with FOISA and gave reasons.  However FOI Unit undertook to make the changes requested and have them sent for Ministerial clearance rather than further delay the response. FOI Unit noted that if an appeal were received it would be necessary to revert to its original approach.
9 February 2017	FOI Unit reverted to case handler with update on agreed position and asked case handler to submit response to Minister for clearance.
10 February 2017	Case handler sent draft response to Minister for clearance.
10 February 2017	Note on tracker: "Spads responded on 10/2".
<i>3 March 2017</i>	<i>Response sent to requester</i>
	[NB there is no further information on the file or tracker, so it is not clear when Ministerial clearance was given.]

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*Potential matters for discussion*

- Causes of the delays in responding, particularly in the period between September and January
- The approach taken to application of exemptions, which became more extensive throughout January and early February

**FOI/16/01545**

*Details of the case*

Name of requester	[redacted], Daily Record
Date of request	12 October 2016
Directorate	Population Health
Lead official	[redacted]
Stage concluded	Review (original decision overturned)

*Timeline*

<u>Date</u>	<u>Event</u>
12 October 2016	<i>Request received</i> Request for details from between April 2015 and October 2016 of any meetings and correspondence between [redacted] Scottish Professional Football League and SG officials in relation to the issue of sectarianism and anti-social and offensive behaviour in Scottish professional football. Requester also sought agendas, minutes and email correspondence on the same topic.
9 November 2016	<i>20 day deadline for responding to the request</i>
9 November 2016	Case handler sent a draft response to special advisers for advice (the email erroneously says “clearance”). It proposed that the agenda of a meeting and four emails arranging a meeting between the SPFL and Ministers should be released, and that two briefings should be withheld on the basis of the section 29(1)(a) exemption (formulation of SG policy).
11 November 2016	Davie Hutchison telephoned case handler, explaining that he considered that much of this material was outwith the scope of the request and asking for it to be removed.
13 November 2016	Requester sought an update.
14 November 2016	Special advisers’ private office passed on further comments on the draft response from Davie Hutchison to the case handler.
15 November 2016	Request sent to Ms Campbell for clearance.
16 November 2016	Ms Campbell confirmed that she was content.
16 November 2016	<i>Response sent to requester</i>
21 November 2016	<i>Review sought by requester</i> [Request for review not on file]
15 and 19 December 2016	Reviewer sought advice from FOI Unit. FOI Unit gave advice that her conclusions would involve substituting a new decision for the original, and releasing additional information.
20 December 2016	<i>Deadline for responding to review</i>

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20 December 2016	Draft review response sent to special advisers for comment. The reviewer and FOI Unit took the view that the material withheld should be released.
21 December 2016	PS/Special advisers advised that Davie Hutchison continued to wish to withhold the material proposed for release as being out of scope.
22 December 2016	FOI Unit set out its detailed reasoning in support of disclosure.
9 January 2017	FOI Unit sought an update from PS/Special advisers.
23 January 2017	FOI Unit met Davie Hutchison to discuss the case.
24 January 2017	FOI Unit updated reviewer on outcome of discussion with Davie Hutchison, commenting:  <p align="center">“<b>[redacted]</b> So he has agreed that the information in pages 1 to 8 of your scanned documents should be released, subject to the redaction of “Elections and potential new Ministers – opportunities and challenges” and “Measuring football performance/ success/ outcomes” from the 18 April 2016 agenda (on page 7). You’ll need to apply the section 30(c) exemption to cover this – I’ve added appropriate wording to your draft review response.”</p>
24 January 2017	Reviewer revised draft response and sent it to Ms Campbell for clearance.
31 January 2017	Ms Campbell sought clarification on whether release would set a precedent and asked whether the letter was unnecessarily apologetic.
1 February 2017	FOI Unit confirmed that no FOI response set a precedent for future cases and reworded the letter so far as it mentioned an incorrectly-applied exemption.
3 February 2017	Ms Campbell clarified that she thought the paragraph about application of the public interest test, which she thought too detailed.
6 February 2017	FOI Unit advised that the paragraph in question was the minimum required to fulfil the legal requirement to apply the public interest test, and so could not be removed.
13 February 2017	<i>Review response issued to requester</i>

*Potential matters for discussion*

- Reasons behind the differences of view about the scope of the request and what should be released
- The time taken for decisions to be reached at review stage

**OFFICIAL – SENSITIVE**

**FOI/16/02137**

*Details of the case*

Name of requester	[redacted]
Date of request	20 December 2016
Directorate	Health Performance and Delivery
Lead official	[redacted]
Stage concluded	Appeal (ordered to release information)

*Timeline*

<u>Date</u>	<u>Event</u>
<i>20 December 2016</i>	<i>Request received</i> Request for list of meetings between Cabinet Secretary for Health and Sport and Chair/Chief Executive NHS Greater Glasgow and Clyde since May 2016 where the Vale Community Maternity Unit was discussed, and all related briefings, minutes etc; all communications between SG and NHS GGC re marketing to promote the Vale Community Maternity Unit.
4 January 2017	Case handler asked Cabinet Secretary's private office to search for information about the Cabinet Secretary's meetings falling within the scope of the request.
4 January 2017	PS/Cabinet Secretary responded with information falling within scope.
13 January 2017	Case handler sent draft response to special adviser (Davie Hutchison). Case handler noted that there was nothing particularly sensitive or contentious to be released, and that while out of scope material was redacted, no FOISA exemptions were being applied to the 6 documents within scope.
<i>23 January 2017</i>	<i>20 day deadline for responding to the request</i>
23 January 2017	PS/Special advisers told case handler that Davie Hutchison was suggesting that documents 2, 3, 5 and Annex A of document 6 should be withheld as being exempt under section 30(b)(ii) (free and frank provision of advice); document 4 and first 3 paras of document 6 should be redacted as outwith scope.
25 January 2017	Case handler revised draft response as proposed and sent to Ms Robison for clearance.
26 January 2017	Ms Robison's private office advised case handler to hold off further action as Davie Hutchison wanted to have a further look.
31 January 2017	Requester sought update.
1 February 2017	Case handler issued holding response, saying "It has taken longer than originally envisaged to source and consider the relevant information."
<i>17 February 2017</i>	<i>Requester sought review of failure to respond</i>
21 February 2017	FOI Unit contacted PS/Special advisers to offer revised draft following a meeting to discuss Davie Hutchison's concerns.
28 February 2017	Case handler revised draft response to reflect that a review request had been made, taking in FOI Unit revisions of 21 February.
1 March 2017	FOI Unit confirmed it was content with revised draft response.
1 March 2017	Case handler sent revised draft response to special advisers.

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17 March 2017	<i>Deadline for responding to review</i>
21 March 2017	<i>Requester appealed to the Scottish Information Commissioner</i>
5 April 2017	Commissioner notified SG that appeal had been validated. The appeal related only to the procedural issue of failure to respond. Submissions were requested by 21 April 2017.
6 April 2017	Case handler notified FOI Unit that Davie Hutchison had considered the 1 March draft. He commented:  “His office replied earlier this week rejecting this and instructing that the majority of info be withheld under s.30(c).”
6 April 2017	FOI Unit noted the position adopted by Davie Hutchison. It advised:  “As this is a review response and there is also an ongoing appeal to the Commissioner about the failure to answer it, <b>[redacted]</b> next step is to appeal to the Commissioner about the refusal to provide the information sought by part (ii) of her request. This is an appeal we will inevitably lose unless we decide to release the information during the investigation.”  In the circumstances FOI Unit was content with the amended draft response that gave effect to the views communicated to the case handler.
21 April 2017	<i>Deadline for responding to the Scottish Information Commissioner</i>
24 April 2017	<i>Response sent to requester</i> <i>Response sent to Scottish Information Commissioner</i>
25 April 2017	Commissioner issued decision finding that the Scottish Ministers had failed to comply with FOISA by failing to respond within the timescales laid down in the legislation.
15 May 2017	<i>Requester appealed to the Scottish Information Commissioner</i> Requester complained about the application of the section 30(c) exemption, and application of the public interest test.
30 May 2017	Commissioner notified SG that the appeal had been validated and requested that all of the withheld information be provided by 13 June.
12 June 2017	FOI Unit supplied the requested information to the Commissioner.
30 June 2017	Commissioner invited detailed response from SG, to be received by 17 July.
17 July 2017	FOI Unit submitted response to the Commissioner.
7 September 2017	<i>Decision issued by Commissioner</i> The Commissioner found that the Ministers had correctly withheld some information under section 30(c) (two sentences in document 4). She found that they were not entitled to withhold the other information, and required them to disclose it.
11 September 2017	Case handler redacted document 4 in accordance with the Commissioner’s Decision and prepared the other documents for release, notifying FOI Unit.
23 October 2017	<i>Information provided to requester</i>

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*Potential matters for discussion*

- Causes of the delays in responding throughout the case, particularly in dealing with the review request and in issuing the information following the Commissioner’s Decision
- Reasons for the approach taken to applying the section 30(c) exemption in light of the differing views about how to do so

**FOI/17/00171**

*Details of the case*

Name of requester	[redacted], BBC
Date of request	16 January 2017
Directorate	Health Performance and Delivery
Lead official	[redacted]
Stage concluded	Appeal (withdrawn following release of information in full)

*Timeline*

<u>Date</u>	<u>Event</u>
16 January 2017	<i>Request received</i> Request for information about correspondence between Scottish Government and [redacted] re NHS Scotland Productivity; also for same re his role on the Cabinet Secretary’s 2020 Vision Advisory Board.
23 January 2017	Case handler consulted [redacted] about whether information should be disclosed.
23 to 25 January 2017	Case handler liaising with policy areas to collate information within scope of request.
31 January 2017	Case handler received response from [redacted] indicating he had nothing to add to his previous letter.
6 February 2017	Case handler sent request and collated documents to special advisers’ private office as requested by Davie Hutchison.
7 February 2017	Special advisers’ private office acknowledged receipt and asked for draft response.
8 February 2017	Case handler sent holding response to requester, commenting “it is taking longer than expected to deal with your request because we are checking with third parties.”
8 February 2017	Case handler sent draft response to PS/Special advisers.
8 February 2017	PS/Special advisers sought clarification about which documents the case handler proposed to release.
10 February 2017	Case handler responded to PS/Special advisers.
16 February 2017	<i>20 day deadline for responding to the request</i>
5 March 2017	Case handler requested update from PS/Special advisers.
5 March 2017	PS/Special advisers confirmed that draft was still being considered by special advisers.
22 March 2017	Requester sought update.
23 March 2017	Case handler requested update from PS/Special advisers.

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24 March 2017	Case handler advised requester that no update was forthcoming as she was awaiting input from colleagues.
3 April 2017	<i>Requester sought review of failure to respond</i>
4 April 2017	Case handler informed PS/Special advisers and FOI Unit of request for review.
4 April 2017	FOI Unit provided advice on how to deal with review request.
10 April 2017	Case handler acknowledged receipt of review request to requester.
11 April 2017	<p>PS/Special advisers responded to case handler:</p> <p>“I have discussed with Davie and his view is that while this information is a couple of years old some of the material is still being actively considered in the formulation of SG policy in relation to the Health and Social Care Delivery Plan – and as such should be considered for exemption under s.29(1)(a). Grateful if you could reconsider the information you propose to release in light of Davie’s comments.</p> <p>If you could then provide a revised response to reflect the above and that this is now a review etc. I will discuss again with Davie.”</p>
12 April 2017	<p>Case handler responded to PS/Special advisers:</p> <p align="center"><b>[redacted]</b></p> <p>Case handler went on to set out detailed reasons for her views.</p>
13 April 2017	Case handler met PS/Special advisers and Davie Hutchison.
14 April 2017	<p>PS/Special advisers revised the draft response and indicated to the case handler:</p> <p>“Subject to the changes proposed being taken on board Davie is content for this to go to the Cabinet Secretary for clearance.”</p>
18 April 2017	Case handler sent draft response as revised to Cabinet Secretary for clearance.
20 April 2017	Ms Robison’s private office asked case handler to confirm two details.
2 May 2017	Case handler reverted to private office on return from leave.
2 May 2017	Case handler consulted FOI Unit on draft response as sent to Cabinet Secretary.
3 May 2017	PS/Cabinet Secretary confirmed that Ms Robison was content to approve the response.
4 and 5 May 2017	FOI Unit and case handler liaising on technical changes required to put letter in proper format.
11 May 2017	FOI Unit revised draft and advised that exemptions could not be applied in a blanket fashion as suggested. The covering letter was identified as a particular issue.
16 May 2017	<i>Response sent to requester</i>
23 May 2017	<p align="center"><i>Requester appealed to the Scottish Information Commissioner</i></p> <p>Requester complained about length of time taken to respond; failure to give advice and assistance; application of exemptions and public interest test.</p>

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30 May 2017	Commissioner notified SG that the appeal had been validated and requested that all of the withheld information be provided by 13 June.
13 June 2017	FOI Unit supplied the requested information to the Commissioner, noting that information had been identified that had been withheld in error, and that the FOI Unit proposed to release it as soon as possible.
27 June 2017	Commissioner invited detailed response from SG, to be received by 11 July.
10 July 2017	FOI Unit confirmed to Commissioner that all information requested had been released to the requester.
11 July 2017	Commissioner advised FOI Unit that the appeal had been withdrawn by the requester following release of the information.

*Potential matters for discussion*

- Causes of the delays in responding throughout the case
- Reasons for the approach taken to the section 29(1)(a) exemption, and the reversal of that decision when appealed to the Commissioner

**Conclusion**

5. You are invited to note the information in this minute.

[redacted]  
FOI Unit  
[redacted]

**16 May 2018**

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

Paul Gray  
Alan Hunter  
Andrew Scott  
David Rogers  
Ian Davidson  
**[redacted]**  
**[redacted]**  
Liz Lloyd  
Stuart Nicolson  
John Somers  
**[redacted]**  
**[redacted]**

**From:** Cabinet Secretary for Culture, Tourism and External Affairs

**Sent:** 16 May 2018 16:54

**To:** [redacted]; [redacted]

**Cc:** Rogers DA (David) (Strategy and Constitution Director) <David.Rogers@gov.scot>; Pryce JM (Jonathan) <Jonathan.Pryce@gov.scot>; Watt K (Karen) (Director for External Affairs) <Karen.Watt@gov.scot>; Davidson I (Ian) (CUKR) <Ian.Davidson2@gov.scot>; Somers J (John) <John.Somers@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; Cameron DA (Donald) <Donald.Cameron@gov.scot>; Glass G (Gill) <Gill.Glass@gov.scot>; CUKR : Freedom of Information Unit <DLCEABCUKRFIU@gov.scot>

**Subject:** Re: FOI: Scottish Information Commissioner's Intervention

Thanks [redacted],

Ms Hyslop has noted

Kind regards

[redacted]

Sent from my BlackBerry 10 smartphone.

**From:** [redacted]

**Sent:** Tuesday, 15 May 2018 16:06

**To:** Cabinet Secretary for Culture, Tourism and External Affairs; [redacted]

**Cc:** Rogers DA (David) (Strategy and Constitution Director); Pryce JM (Jonathan); Watt K (Karen) (Director for External Affairs); Davidson I (Ian) (CUKR); Somers J (John); Lloyd E (Elizabeth); McAllister C (Colin); Nicolson S (Stuart) Special Adviser; [redacted]; [redacted]; CUKR : Freedom of Information Unit

**Subject:** RE: FOI: Scottish Information Commissioner's Intervention

[redacted]

As a brief follow up, it may be worth noting that since early July 2017 we have published information released in response to information requests on the SG website - with publication following as soon as possible after the response is issued.

However, the decision to do this was not of itself aimed at addressing the concerns of journalists but in the interests of wider transparency objectives (and indeed, at the time, produced some negative reaction from journalists).

Thanks

[redacted]

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**From:** [redacted]

**Sent:** 15 May 2018 10:14

**To:** Cabinet Secretary for Culture, Tourism and External Affairs; [redacted]

**Cc:** Rogers DA (David) (Strategy and Constitution Director); Pryce JM (Jonathan); Watt K (Karen)

(Director for External Affairs); Davidson I (Ian) (CUKR); Somers J (John); Lloyd E (Elizabeth); McAllister C (Colin); Nicolson S (Stuart) Special Adviser; [redacted]; [redacted]; CUKR : Freedom of Information Unit

**Subject:** RE: FOI: Scottish Information Commissioner's Intervention

[redacted]

The attached information may assist. It contains the Open Letter and the prepared responses (both letter and responses taken from briefing for last June's FOI debates).

There have been no changes in practice. The outcome of the current intervention process will determine what changes we may wish to make – or be required to make by the Scottish Information Commissioner.

[redacted]

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**From:** [redacted] **On Behalf Of** Cabinet Secretary for Culture, Tourism and External Affairs

**Sent:** 15 May 2018 09:45

**To:** [redacted]; Cabinet Secretary for Culture, Tourism and External Affairs

**Cc:** Rogers DA (David) (Strategy and Constitution Director); Pryce JM (Jonathan); Watt K (Karen) (Director for External Affairs); Davidson I (Ian) (CUKR); Somers J (John); Lloyd E (Elizabeth); McAllister C (Colin); Nicolson S (Stuart) Special Adviser; [redacted]; [redacted]; CUKR : Freedom of Information Unit

**Subject:** RE: FOI: Scottish Information Commissioner's Intervention

Thanks [redacted],

Ms Hyslop has noted and has asked for info about the journalists complaint i.e what it is and are there any practice changes she should be aware of?

Kind regards

[redacted]

[redacted] | Assistant Private Secretary (Diary)

Office of Fiona Hyslop, Cabinet Secretary for Culture, Tourism and External Affairs

Telephone: 0131 244 [redacted]

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**From:** [redacted]

**Sent:** 14 May 2018 16:53

**To:** Cabinet Secretary for Culture, Tourism and External Affairs

**Cc:** Rogers DA (David) (Strategy and Constitution Director); Pryce JM (Jonathan); Watt K (Karen) (Director for External Affairs); Davidson I (Ian) (CUKR); Somers J (John); Lloyd E (Elizabeth); McAllister C (Colin); Nicolson S (Stuart) Special Adviser; [redacted]; [redacted]; CUKR : Freedom of Information Unit

**Subject:** RE: FOI: Scottish Information Commissioner's Intervention

[redacted]

Thank you. Ms Hyslop will not be asked about any specific cases. However, in our meeting last week, she asked for some background on the main exemptions that tended to apply to FOI requests covered by her portfolio (UK Relations, international relations and communications with the Royal Family) and for some comparisons with the UK Government. This is covered in pages 1-3 of the attached document.

Ms Hyslop also indicated it would be useful to see information about how the Directorates within her portfolio were performing in responding to FOI requests. Page 4 of the document shows the performance of Culture, Tourism & Major Events and External Affairs from April 2017, when the Commissioner set us the 85% target (which increased to 90% from January):

- Culture, Tourism & Major Events has hit 100% in every month they received requests, except one, when they missed the target.
- External Affairs struggled at two periods of the year (which I think may have coincided with significant upturns of Brexit related pressure). However, they have now hit 100% every month from December to March.

Please do not hesitate to contact me should Ms Hyslop have any questions.

[redacted]

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**From:** [redacted] **On Behalf Of** Cabinet Secretary for Culture, Tourism and External Affairs

**Sent:** 14 May 2018 14:16

**To:** [redacted]

**Cc:** Deputy First Minister and Cabinet Secretary for Education and Skills; Cabinet Secretary for Culture, Tourism and External Affairs; Cabinet Secretary for Economy, Jobs and Fair Work; Cabinet Secretary for Health and Sport; First Minister; Minister for Parliamentary Business; Minister for Public Health and Sport; Lord Advocate; Somers J (John); Permanent Secretary; Rogers DA (David) (Strategy and Constitution Director); Cackette PH (Paul); Allison B (Barbara); Richards N (Nicola); Davidson I (Ian) (CUKR); Lloyd E (Elizabeth); Nicolson S (Stuart) Special Adviser; McFarlane J (John); Hutchison D (David); Maxwell S (Stewart) (Special Adviser); McAllister C (Colin); Glass G (Gill); Duncan A (Alison); Beattie C (Caroline); Brady G (Gillian); [redacted]; CUKR : Freedom of Information Unit; Cabinet Secretary for Culture, Tourism and External Affairs

**Subject:** FW: FOI: Scottish Information Commissioner's Intervention

[redacted],

Ms Hyslop has noted.

Regards,

[redacted]

Assistant Private Secretary (Correspondence)

Office of Fiona Hyslop, Cabinet Secretary for Culture, Tourism and External Affairs  
Scottish Government, Room 2N.15, St Andrew's House, Regent Road, Edinburgh,  
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