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Scottish Information Commissioner
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Your Ref: VC125485

Dear Daren

Thank you for your letter dated 17 October. I can assure you that the Scottish Government is fully aware that the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 apply to all our recorded official information, wherever it is held.

It may be helpful if I set out the work we have undertaken to date to ensure that Scottish Government staff and Scottish Ministers are aware of their responsibilities. When the UK Information Commissioner issued guidance in 2011 on official information held in private email accounts and devices, the Minister for Parliamentary Business wrote to all Ministers, reminding them that information recorded in any form is subject to FOISA, and that private e-mail accounts may need to be searched when considering a response to a request made under FOISA. A similar note was also issued to all Directors General and our guidance for case-handlers was updated to reinforce this.

The latest version of that guidance, which was updated last year to reflect the proliferation of social media is attached as an appendix to this letter. This guidance is available to all Scottish Government staff and Scottish Ministers. Our Freedom of Information Unit briefed incoming Ministers to ensure that they are aware of their responsibilities under FOISA and make themselves available to answer any questions they may have. I can also confirm that our e-learning module advises that private accounts may need to be searched and this has been built into the new training for our designated case-handlers, which is currently rolling out across the Scottish Government (and on which your office has kindly commented).

Finally, I can confirm that, as part of their ongoing learning & development activities, Ministerial Private Office staff attended a workshop on FOI handling in August last year. That session covered the need for searches to check everywhere that is relevant and explicitly mentioned the need to check whether information was held on personal devices.

The Scottish Government has well established processes in place for the conduct of official business, which ensure we comply with all current records management and information legislation. As the First Minister has stated in parliament she receives and conducts most

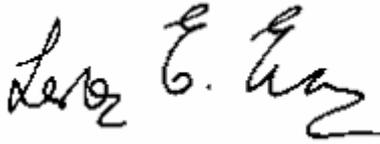
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Government business via paper copies. In the event that information is required to be sent to her out of hours, her private office can do so via a Scottish Government email address. All of this information would of course be subject to FOISA.

I trust that I have addressed the points you raised and given you assurance that we have robust processes in place to ensure we are fully compliant with the legislation.

Yours sincerely,



LESLIE EVANS
Permanent Secretary

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Appendix

Business Information held in personal accounts or devices

- The Scottish Government has always recognised that FOI applies to all types of recorded information from any source.
- Where official information - that is information relating to the business of the SG - is held in private accounts or on private devices, it is subject to the Act.
- A case-handler should ask anyone who may hold relevant information to check their personal accounts and devices to ensure that all appropriate searches have taken place.
- There should be a record of the action taken - we need to be able to demonstrate, if required, that appropriate searches have taken place.
- Personal accounts include, but are not limited to: email accounts, social media accounts (eg Facebook, Twitter), text messaging, mobile messaging (eg WhatsApp, Skype, Snapchat), cloud storage and use of collaboration tools.
- Personal devices include, but are not limited to: PCs, laptops, tablets, mobile telephones.
- Although we often focus on information held electronically, FOISA covers official information recorded in any form, so 'hard copy' held in pads, notebooks etc, is also subject to the Act.

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