

## Document 1

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 10:11  
**To:** Fol SpAds PO; Corporate Communications  
**Cc:** [redacted]; Green E (Eric)  
**Subject:** Draft response for info

Good Morning,

Please note the attached draft response awaiting clearance – for info in case any lines are deemed necessary.

Regards

Emma

Emma Slater  
Casework Officer  
Freedom of Information Unit  
2W  
St Andrews House  
0131 244 8074

## Document 1(a)

Constitution and Cabinet Directorate  
Elections and FOI Division

T: 0131-244-8074  
E: Emma.Slater@gov.scot



Scottish Go  
Riaghaltas n  
gov.scot  
vernment

██████████  
Sent via Email to:  
request ██████████ -  
██████████@whatdotheyknow.com

Our ref: Fol/18/03284

Xx November 2018

Dear ██████████,

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

Thank you for your request dated 4 November 2018 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### **Your request**

Please provide the following Scottish Government statistics:

For the period 1 April 2018 to 30 September 2018

(A) The number of responses\* to FOI requests that included use of the FOISA Public Interest Test. Please list the number of responses by FOISA exemption category (an exemption category being a FOISA section reference – such as section 30(c): effective conduct of public affairs).

(B) For each FOISA exemption category in (A), please disclose the outcome of the Public Interest Test, specifically:

- The number of responses in favour of withholding information
- The number of responses in favour of disclosing information

\* The statistics should include only first responses to FOI requests and not those arising from internal reviews.

#### **Response to your request**

From 1 April 2018 to 30 September 2018, we responded to 1309 FOI(S)A Requests and the Public Interest test was applied in favour of partial or non disclosure 181 times.

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. Our case management system records information about exemptions where consideration of the public interest (PI) test has resulted in information being withheld, either wholly or in part. However, it does not record information regarding cases where the PI test applies but the decision was in favour of disclosure as there is no requirement under FOISA for this information to be recorded, and we have no business requirement to do so.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

The below table details the number of responses in favour of withholding information – we would wish you to note that the parameters of our reporting system has allowed us to confirm instances where just one of the Public Interest exemptions was applied but there are instances where multiple exemptions are applied in one response and therefore we have included an extra row depicting such.

<b>Public Interest Exemption</b>	<b>Partial Disclosure</b>	<b>Non Disclosure</b>
27(1)	3	5
27(2)	1	0
28	1	3
29(1)(a)	12	4
29(1)(c)	1	1
30(b)(1)	16	3
30(b)(2)	9	0
30(c)	3	6
33(1)(a)	1	0
33(1)(b)	13	4
35	0	1
36(1)	3	2
39(1)	2	0
39(2)	1	0
41(a)	1	0
Multiple Exemptions	73	12
<b>TOTALS</b>	<b>140</b>	<b>41</b>

These figures have been extracted from our Freedom of Information Tracker database. This is an operational tool used by our Case Handlers and was designed primarily for day to day operational functions, rather than detailed statistical reporting.

A further breakdown of how FOI requests were responded to within this period is shown in the table below:

<b>Reponse Decision</b>	<b>Number of cases</b>
Full disclosure	442
Partial disclosure	371
No information released (reasons include upper cost limit applies, information not held, and all absolute and qualified exemptions)	480
Request invalid	16
<b>Total</b>	<b>1309</b>

### **Your right to request a review**

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to:

David Rogers  
Director of Strategy & Constitution  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG  
[david.rogers@gov.scot](mailto:david.rogers@gov.scot)

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Kind Regards

Emma Slater  
Caseworker

## Document 1(b)

Constitution and Cabinet Directorate  
Constitution and UK Relations Division

T: 0131-244 «Ext» F: 0131-244 «Fax»  
E: «email»@gov.scot



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vernment

«Name»  
«Organisation»  
«Address1»  
«Address2»  
«Address3»  
«Address4»  
«Address5»  
«Address6»  
«Address7»

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Your ref: «Yourref»  
Our ref: «Ourref»  
«Date»

«Salutation»

## Document 2

**From:** [redacted]  
**Sent:** 12 November 2018 14:37  
**To:** Slater E (Emma)  
**Subject:** RE: Draft FOI Response FOI/18/03284

We usually forget. We're too close to the process!

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 14:36  
**To:** [redacted]  
**Subject:** RE: Draft FOI Response FOI/18/03284

Nice catch [redacted]! I would have forgotten which is twice as bad since I chase people up for not sending in....

**From:** [redacted]  
**Sent:** 12 November 2018 14:35  
**To:** Slater E (Emma)  
**Subject:** RE: Draft FOI Response FOI/18/03284

Emma

Thanks.

PS - don't forget to send for publication (I have noticed we quite often don't).

[redacted]

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 14:32  
**To:** Curtis PS (Penelope)  
**Cc:** [redacted] Green E (Eric)  
**Subject:** RE: Draft FOI Response FOI/18/03284

Thank you Penny, I will issue now.

Regards

Emma

**From:** Curtis PS (Penelope)  
**Sent:** 12 November 2018 14:31  
**To:** Slater E (Emma)  
**Cc:** [redacted]; Green E (Eric)  
**Subject:** RE: Draft FOI Response FOI/18/03284

Thanks Emma, that's helpful. Yes, I'm content.

Penny

Penny Curtis | Head of Elections and Freedom of Information Division | Constitution and Cabinet Directorate | Scottish Government | 2.W02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [redacted] | Mobile [redacted]

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 14:24  
**To:** Curtis PS (Penelope)  
**Cc:** [redacted]; Green E (Eric)  
**Subject:** RE: Draft FOI Response FOI/18/03284

Hi Penny,

We do provide most of these stats in the FOI Annual Report.

We may not usually go into such detail regarding the application of the PI test but we have given additional figures (see table at end of response) to the requestor in order to provide that context and balance out the figures – help give a fuller picture.

If you are content, I will issue today and send to Mr Dey for info?

Thank you,  
Regards  
Emma

**From:** Curtis PS (Penelope)  
**Sent:** 12 November 2018 14:17  
**To:** Slater E (Emma)  
**Cc:** [redacted]; Green E (Eric)  
**Subject:** RE: Draft FOI Response FOI/18/03284

Emma

I think I am content with the response.

Out of interest, how much of this information (or similar information) is already in the public domain? For example, I'm guessing stats about the numbers of FOIs we receive and the numbers where we release, withhold or partially release information is published relatively routinely, so we're saying nothing new or controversial in that? I'm asking just to give me the context.

Thanks

Penny

Penny Curtis | Head of Elections and Freedom of Information Division | Constitution and Cabinet Directorate | Scottish Government | 2.W02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [redacted] | Mobile [redacted]

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 10:09  
**To:** Curtis PS (Penelope)  
**Cc:** [redacted]; Green E (Eric)  
**Subject:** Draft FOI Response FOI/18/03284

Penny,

Grateful if you could consider the attached draft response for issue please. I am also sending this draft to Comms/Spads now so they may consider any necessary lines.

Thank you,

Regards

Emma

**Emma Slater**

**Casework Officer**  
**Freedom of Information Unit**  
**2W**  
**St Andrews House**  
**0131 244 8074**

**(NB. Attached draft provided as Document 1(a))**

### Document 3

**From:** [redacted]

**Sent:** 13 November 2018 09:39

**To:** EFD : Freedom of Information Unit

**Subject:** FW: FOI - CEA - REVIEW - Statistics of FOI responses subject to the Public Interest Test - [redacted]

Looking for someone to take on this review (Emma S did the original reply).

I do not, on first reading, understand what [redacted] is asking to be reviewed (though I take his point about partial disclosure applying to a request rather than a specific piece of information).

[redacted]

**From:** Rogers D (David) (Constitution and Cabinet Director)

**Sent:** 13 November 2018 09:19

**To:** [redacted]; Curtis PS (Penelope)

**Cc:** [redacted]

**Subject:** FW: FOI - CEA - REVIEW - Statistics of FOI responses subject to the Public Interest Test - [redacted]

[redacted], Penny - can you arrange for this to be acknowledged and the case reviewed please? David

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

## Document 6

**From:** Crombie G (Graham)

**Sent:** 26 November 2018 19:12

**To:** Curtis PS (Penelope)

**Cc:** [redacted]; Veitch J (Jennifer); Walkinshaw S (Sarah); Slater E (Emma)

**Subject:** FOI/18/03284 - review - draft response - request for clearance at official level

Penny,

I have completed the review of our response to the above FOI request (which we discussed earlier this afternoon). I am proposing to uphold the decision with modifications, for the reasons set out below. You cleared the original response and I have not identified anything on review that makes me consider that a Ministerial decision is now necessary, so I would be grateful if you could clear the review response. I attach a link to the draft response itself, and to the overall file for the case.

The deadline for responding is 12 December.

Happy to discuss.

Graham

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### *Background*

We received the following FOI request from [redacted] on 4 November:

**Statistics of Freedom of Information (FOI) responses subject to the Public Interest Test**

Please provide the following Scottish Government statistics:

For the period 1 April 2018 to 30 September 2018

(A) The number of responses\* to FOI requests that included use of the FOISA Public Interest Test. Please list the number of responses by FOISA exemption category (an exemption category being a FOISA section reference – such as section 30(c): effective conduct of public affairs).

(B) For each FOISA exemption category in (A), please disclose the outcome of the Public Interest Test, specifically:

- The number of responses in favour of withholding information
- The number of responses in favour of disclosing information

\* The statistics should include only first responses to FOI requests and not those arising from internal reviews.

It was allocated to the FOI Unit for response and Emma Slater was the case handler. On 12 November, you cleared her draft response and it was issued. It contained a notice under section 17(1) of FOISA that the Scottish Government did not have the information requested, and went on to provide other related information that we were able to extract from the FOI tracker.

We received the requester's request for review on 13 November. It was allocated to me and acknowledged on 16 November. I have identified the requester's dissatisfaction with the handling of the request as being that he did not believe that we had provided the information that he had requested. The request for review is fairly lengthy, but this appears to be the central issue. The requester pointed out that he was looking for information about the outcome of applying the public interest test, not the outcome of the overall request for information. The public interest test might be applied multiple times in relation to a single request, so the two sets of information do not coincide.

### *Discussion*

On review, an authority may either confirm its decision, with or without modification, or substitute a different decision. **In this case, I am proposing that the original decision should be confirmed with modifications, for the following reasons.**

As I indicate in the draft review response, I consider that the initial decision (that we did not hold the information) was correct. My reasoning for this is set out in greater detail in an email of 23 November to others in the Unit canvassing the options for responding to this review, and the responses to that dated today. It would be possible to substitute a different decision (that the request should be refused under section 12 FOISA because the cost of complying would exceed £600) but if we did that the requester might make a new, narrower request and we would come back to the same issue – that the information that we would need to answer the request is most likely missing from the majority of case files.

I am however proposing to modify the decision to the extent of restating our reasoning for not holding the information, making it clear that it applies to all of his requests, and in order to identify more clearly that the information provided instead was provided outwith FOISA. I also take the opportunity to respond to the point ██████████ makes about partial disclosure. I think that this should make the position clearer (and, indeed, it largely agrees with the points ██████████ makes in his request for review – we can do that without changing the overall decision).

**Graham Crombie | Head of Policy | Freedom of Information Unit**

**Scottish Government** | 2W | St Andrew's House | Regent Road | Edinburgh | EH1 3DG  
T: (0131) 244 2678 | M: 07771 387330

## Document 6 (a)

Constitution and Cabinet Directorate  
Elections and FOI Division

T: 0131-244 2678  
E: graham.crombie@gov.scot



Scottish Government  
Riaghaltas n  
gov.scot  
vernment

[REDACTED]

By email only to [request \[REDACTED\].@whatdotheyknow.com](mailto:request.[REDACTED].@whatdotheyknow.com)

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Your ref:  
Our ref: FOI/18/03284  
27 November 2018

Dear [REDACTED]

### **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 RESPONSE TO REQUEST FOR REVIEW**

I refer to my email of 16 November 2018 acknowledging your request for review, and your further email on this topic dated today. I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for the following information:

Please provide the following Scottish Government statistics:

For the period 1 April 2018 to 30 September 2018

(A) The number of responses\* to FOI requests that included use of the FOISA Public Interest Test. Please list the number of responses by FOISA exemption category (an exemption category being a FOISA section reference – such as section 30(c): effective conduct of public affairs).

(B) For each FOISA exemption category in (A), please disclose the outcome of the Public Interest Test, specifically:

- The number of responses in favour of withholding information
- The number of responses in favour of disclosing information

\* The statistics should include only first responses to FOI requests and not those arising from internal reviews."

I have concluded that the original decision should be confirmed with modifications, for the following reasons. In your request for review, you indicated that you did not believe that we had provided the information that you had requested, and I have interpreted this as the matter which gives rise to your dissatisfaction with the way we have handled your request for information.

In your request for review, you point out that you were looking for information about the outcome of applying the public interest test, not the outcome of the overall request for information. Having reconsidered our response to you, I am satisfied that we reached the correct conclusion in deciding that the information that you sought was not held by us, and therefore issuing a formal notice under section 17(1) to that effect.

However, I am of the view that our response could have been structured more clearly, and in particular that we could have identified more clearly that the information that was provided to you was not the answer to your request: instead, it represented the closest information that we did hold. It should also have been made clear that this contextual information was being provided to you outwith FOISA, as it was not the information that you had requested.

Furthermore, I agree that applying the public interest test to individual items of information results either in the disclosure or the withholding of that information. Where we have referred to "partial disclosure", this describes an entire request where some information has been disclosed and some information has been withheld following the application of a qualified exemption.

In the circumstances, I think it would be helpful if I set out, of new, our response to the questions in your original request.

### Part (A)

Part (A) of your request asked for the number of responses to FOI requests that included use of the public interest test. It also asked that the information be presented in a particular way, in that it asked for the number of responses to be broken down according to exemption category. I take the view that this amounts to asking for the provision of a digest of the information in terms of section 11(2)(b) of FOISA.

We are unable to provide this information because the Scottish Government does not have the information that you have requested. Our case management system only records information about exemptions where information has been withheld under that exemption. Where a qualified exemption has been considered but the outcome of the public interest test is that the information should be disclosed, we do not record that fact.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested in part (A) of your request.

Additionally, we have determined that it is not reasonably practicable to give effect to your preference that the information you have requested in part (A) be broken down

according to exemption category. We have reached that decision because clearly we cannot provide a digest or summary of information that we do not hold.

### Part (B)

Part (B) of your request asked that we disclose the outcome of the public interest test for each of the exemption categories. In particular, you asked for the number of responses in favour of withholding information, and the number in favour of disclosing information.

As you note in your request for a review, the public interest test might be applied multiple times in a single response, as a qualified exemption (and hence the public interest test) may be applied to more than one individual piece of information within that response. I can confirm that the Scottish Government does not record the total number of times that the public interest test is used in relation to any particular response. As previously noted, our case management system only records information about exemptions where information has been withheld under that exemption. It also does not record how many times an exemption has been applied to withhold information in any given response.

Accordingly, we are unable to provide this information because the Scottish Government does not have the information that you have requested.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested in part (B) of your request.

### Information provided outwith FOISA

Although we did not hold the information that you requested, in our original response we provided the closest available information in order to assist your understanding of the information that we do record in relation to the application of the public interest test.

In relation to the first table, I would clarify that the terms “partial disclosure” and “non disclosure” relate to the response as a whole. So, for example, there were 3 cases where some information was withheld under section 27(1) but other information was disclosed, and 5 cases where all of the information sought was withheld under that exemption.

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

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Telephone: 01334 464610

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

Yours sincerely



**GRAHAM CROMBIE**  
Head of Policy  
FOI Unit

## Document 7

**From:** Curtis PS (Penelope)

**Sent:** 27 November 2018 09:32

**To:** Crombie G (Graham)

**Cc:** [redacted]; Veitch J (Jennifer); Walkinshaw S (Sarah); Slater E (Emma)

**Subject:** RE: FOI/18/03284 - review - draft response - request for clearance at official level

Graham

Thank you for this clear explanation. I agree with your conclusion and with your draft reply.

Penny

Penny Curtis | Head of Elections and Freedom of Information Division | Constitution and Cabinet Directorate | Scottish Government | 2.W02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [redacted] | Mobile [redacted]

## Document 8

**From:** Curtis PS (Penelope)  
**Sent:** 27 November 2018 16:05  
**To:** Crombie G (Graham)  
**Cc:** [redacted]; Veitch J (Jennifer); Walkinshaw S (Sarah); Slater E (Emma)  
**Subject:** RE: FOI/18/03284 - review - draft response - request for clearance at official level

Thanks Graham, I agree.

Penny Curtis | Head of Elections and Freedom of Information Division | Constitution and Cabinet Directorate | Scottish Government | 2.W02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [redacted] | Mobile [redacted]

**From:** Crombie G (Graham)  
**Sent:** 27 November 2018 11:25  
**To:** Curtis PS (Penelope)  
**Cc:** [redacted]; Veitch J (Jennifer); Walkinshaw S (Sarah); Slater E (Emma)  
**Subject:** RE: FOI/18/03284 - review - draft response - request for clearance at official level

Penny,

Many thanks for this [redacted] has been in touch this morning (via CEU) to add the following comment:

“I have had further reflection on the original response and my request for internal review. I believe the information I am seeking is held and there is an overwhelming public interest in having the information publicly available. It is not at all 'debatable' as I originally suggested.”

This relates to the following in his request for review:

“From the second paragraph in “response to your request”, I understand the Scottish Government does not record instances where the outcome of the public interest test is full disclosure because it believes there is no business reason for doing so (although this is a debatable assertion as it would aid understanding organisational bias for or against disclosure). Therefore, I believe “information not held” is the correct response to the second bullet point in part (B) of my request.”

Our position is, as set out in the draft, that the information is not held. If it is not held, the public interest test is not in play. In short [redacted] argument is that we *should* hold certain information that we do not. However that is a records management, rather than FOISA, issue.

As a result, I'm not proposing to change anything substantive about the letter, though I will insert a line in the opening para acknowledging this further correspondence from him.

Graham  
**Graham Crombie | Head of Policy | Freedom of Information Unit**

T: (0131) 244 2678 | M: 07771 387330

## Document 9

**From:** [redacted] **On Behalf Of** Davidson I (Ian) (CUKR)

**Sent:** 12 November 2018 07:03

**To:** Ridout R (Ruth); [redacted]; Starrs A (Andrew); Slater E (Emma)

**Cc:** Davidson I (Ian) (CUKR); [redacted]; Rogers D (David) (Constitution and Cabinet Director)

**Subject:** FOI tracker 9th November

All,

This got stuck in my outbox on Friday.

[redacted]

[redacted]

 Business Manager to Ian Davidson

Constitution & UK Relations Division

Area 2West

St Andrews House

 [redacted]

 Do you really need to print this e-mail?

## Document 9(a)

Attachment to document 9 provided separately as an extract as remainder of the document is out of scope as it does not relate to request reference FOI/18/03284.

## Document 10

**From:** [redacted] **On Behalf Of** Davidson I (Ian) (CUKR)  
**Sent:** 09 November 2018 09:50  
**To:** [redacted]; Starrs A (Andrew); Slater E (Emma)  
**Cc:** Davidson I (Ian) (CUKR)  
**Subject:** FOI tracker 9th November

All,

Grateful if you could provide an update on your FOI's by 11 am today.

[redacted]

[redacted]

 Business Manager to Ian Davidson  
Constitution & UK Relations Division  
Area 2West  
St Andrews House

 [redacted]

 Do you really need to print this e-mail?

**(NB. Attached draft provided as Document 9(a))**

## Document 11

Provided separately as an extract as remainder of the document is out of scope as it does not relate to request reference FOI/18/03284.

## Document 12

**From:** [redacted]  
**Sent:** 12 November 2018 09:50  
**To:** Slater E (Emma)  
**Cc:** Green E (Eric); Crombie G (Graham); Veitch J (Jennifer)  
**Subject:** RE: FOI/18/03284 Draft

Emma

From today, it now goes to Penny (Curtis). I think it should only need to go to Mr Dey for information, but we should send to Corporate Comms and SPADs now so they can consider whether lines are necessary

[redacted]

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 09:37  
**To:** [redacted]  
**Cc:** Green E (Eric); Crombie G (Graham); Veitch J (Jennifer)  
**Subject:** RE: FOI/18/03284 Draft

Thanks [redacted]. On the basis of that line being changed, are you content for this to go to Ian and then, if he is content, on to Spads?

Thanks,

Emma

**From:** [redacted]  
**Sent:** 12 November 2018 09:35  
**To:** Slater E (Emma)  
**Cc:** Green E (Eric); Crombie G (Graham); Veitch J (Jennifer)  
**Subject:** RE: FOI/18/03284 Draft

Emma

Thanks, looks about right to me. On the limitations of the tracker, I might end it "rather than **detailed** statistical reporting" as it does enable reporting, just not on a very sophisticated basis..

[redacted]

**From:** Slater E (Emma)  
**Sent:** 12 November 2018 09:26  
**To:** [redacted]  
**Cc:** Green E (Eric); Crombie G (Graham); Veitch J (Jennifer)  
**Subject:** RE: FOI/18/03284 Draft

[redacted],

A tentative 2<sup>nd</sup> draft that I believe covers the below...

Thanks,

Emma

**From:** [redacted]

**Sent:** 09 November 2018 16:07

**To:** Slater E (Emma)

**Cc:** Green E (Eric); Crombie G (Graham); Veitch J (Jennifer)

**Subject:** RE: FOI/18/03284 Draft

Emma

Not sure we are considering a form of words to be used in statistical requests, but I do think that is a sensible way forward. I would change the 2<sup>nd</sup> sentence slightly to "This is an operational tool used by our Case Handlers and was designed primarily for day to day operational functions, rather than statistical reporting".

In my view, this does not really answer what he is asking - we cannot do so. I have attached Ruth's draft to a similar request for comparison - and it took us a lot of toing and froing to work out what we were trying to say.

In relation to question A, he is asking how many of the responses involved the PI test, but we do not record on the tracker where the PI test was applied, but was found to favour disclosure. We can only say the PI test was applied with the result that some or all information was withheld in the 181 cases.

His request at B asks for the number of responses where the PI Test was used that found in favour of disclosing information. As noted above, we do not record where a qualified exemption has been considered, but the balance is in favour of disclosure, so the table does not show "whether or not they favoured disclosure". It does provide the number of responses in favour of withholding information.

Other than the table answering the first part of B, I think this is a section 17 and part 2 of Ruth's letter should be useful.

I do think we should give him the figure of how many replies were issued, but we need to be clear that is all replies, including those where absolute, qualified (and no?) exemptions were considered (as well as refusals?).

Happy to discuss.

[redacted]

NB. Attached drafts provided as 12 (a) and (b) below

**From:** Slater E (Emma)  
**Sent:** 09 November 2018 15:25  
**To:** [redacted]  
**Cc:** Green E (Eric)  
**Subject:** FOI/18/03284 Draft

[redacted],

Grateful if you could consider the attached draft, Eric is basically content.

I understand we are considering adding a caveat to all statistical FOIs regarding the FOI Tracker functionality – the wording here may not be quite the final line but you could consider maybe?

Thank you,

Emma

NB. Attached draft provided as 12 (a) below

## Document 12 (a)

Constitution and Cabinet Directorate  
Elections and FOI Division

T: 0131-244-8074  
E: Emma.Slater@gov.scot



Scottish Go  
Riaghaltas n  
gov.scot  
vernment

██████████  
Sent via Email to:  
request██████████ -  
██████████@whatdotheyknow.com

Our ref: Fol/18/03284

Xx November 2018

Dear ██████████,

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

Thank you for your request dated 4 November 2018 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### **Your request**

Please provide the following Scottish Government statistics:

For the period 1 April 2018 to 30 September 2018

(A) The number of responses\* to FOI requests that included use of the FOISA Public Interest Test. Please list the number of responses by FOISA exemption category (an exemption category being a FOISA section reference – such as section 30(c): effective conduct of public affairs).

(B) For each FOISA exemption category in (A), please disclose the outcome of the Public Interest Test, specifically:

- The number of responses in favour of withholding information
- The number of responses in favour of disclosing information

\* The statistics should include only first responses to FOI requests and not those arising from internal reviews.

## **Response to your request**

From 1 April 2018 to 30 September 2018, we responded to 1579 requests and the Public Interest test was applied 181 times.

The below table details the exemptions applied and whether or not they favoured disclosure – we would wish you to note that the parameters of our reporting system has allowed us to confirm instances where just one of the Public Interest exemptions was applied but there are instances where multiple exemptions are applied in one response and therefore we have included an extra row depicting such.

| <b>Public Interest Exemption</b> | <b>Partial Disclosure</b> | <b>Non Disclosure</b> |
|----------------------------------|---------------------------|-----------------------|
| 27(1)                            | 3                         | 5                     |
| 27(2)                            | 1                         | 0                     |
| 28                               | 1                         | 3                     |
| 29(1)(a)                         | 12                        | 4                     |
| 29(1)(c)                         | 1                         | 1                     |
| 30(b)(1)                         | 16                        | 3                     |
| 30(b)(2)                         | 9                         | 0                     |
| 30(c)                            | 3                         | 6                     |
| 33(1)(a)                         | 1                         | 0                     |
| 33(1)(b)                         | 13                        | 4                     |
| 35                               | 0                         | 1                     |
| 36(1)                            | 3                         | 2                     |
| 39(1)                            | 2                         | 0                     |
| 39(2)                            | 1                         | 0                     |
| 41(a)                            | 1                         | 0                     |
| Multiple Exemptions              | 73                        | 12                    |
| <b>TOTALS</b>                    | <b>140</b>                | <b>41</b>             |

These figures have been extracted from our Freedom of Information Tracker database. This is an operational tool used by our Case Handlers and was designed for day to day operational functions, not statistical reporting.

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. There may have been instances where the Public Interest test was performed and it weighed in the interest of full disclosure, however, we do not record such and therefore cannot confirm the number of times this may have applied.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

## **Your right to request a review**

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to:

David Rogers  
Director of Strategy & Constitution  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG  
[david.rogers@gov.scot](mailto:david.rogers@gov.scot)

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Kind Regards

Emma Slater  
Caseworker

## Document 12 (b)

Constitution and Cabinet Directorate  
Elections and FOI Division

T: 0131-244 49863  
E: foi@gov.scot



[redacted]

By email to: [redacted]

---

Our ref: FOI/18/03174

November 2018

Dear [redacted]

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

Thank you for your request dated 30 October 2018 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### Your request

You asked for:

“Please release the following information.

1. How many FOI responses has the Scottish Government issued between 1/10/18 and 30/10/18 (inclusive)?
2. Of these, how many were subject to exemptions where the 'public interest test' applies?
3. In how many of those cases did the government decide that, although an exemption did apply, the public interest test favoured greater disclosure (with the material therefore released)?”

#### Response to your request

1. Between 1 October 2018 and 30 October 2018 (inclusive) the Scottish Government responded to 434 FOI requests. It should be noted that this figure

incorporates responses issued under the regimes of both FOISA and the Environmental Information (Scotland) Regulations 2004 (EIRs).

2. While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. Our case management system records information about exemptions where consideration of the public interest (PI) test has resulted in information being withheld, either wholly or in part. However, it does not record information regarding cases where the PI test applies but the decision was in favour of disclosure as there is no requirement under FOISA for this information to be recorded, and we have no business requirement to do so.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

It might be useful to note that between 1 October 2018 and 30 October 2018, 85 of the 434 cases we responded to had the PI test applied but favoured withholding information (63 of these resulted in withholding some information, and 22 resulted in withholding all information). A further breakdown of how FOI requests were responded to within this period is shown in the table below:

| <b>Response Decision</b>                                                                                                            | <b>Number of cases</b> |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Full disclosure                                                                                                                     | 153                    |
| Partial disclosure                                                                                                                  | 115                    |
| No information released (reasons include upper cost limit applies, information not held, and all absolute and qualified exemptions) | 164                    |
| Request invalid                                                                                                                     | 2                      |
| <b>Total</b>                                                                                                                        | <b>434</b>             |

3. While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. As noted above, our case management system does not record information regarding cases where the PI test applies but the decision was in favour of disclosure.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

#### Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to:

David Rogers  
Director of Constitution and Cabinet  
St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

or by email to [david.rogers@gov.scot](mailto:david.rogers@gov.scot)

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

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

Yours sincerely

Ruth Ridout  
FOI Unit

**Document 13**

**From:** Slater E (Emma)

**Sent:** 12 November 2018 14:38

**To:** Minister for Parliamentary Business and Veterans

**Cc:** [redacted]; Green E (Eric)

**Subject:** FOI/18/03284 response - for information only

Good Afternoon,

For information, please note the FOI response just issued.

Regards

Emma

**Emma Slater**

**Casework Officer**

**Freedom of Information Unit**

**2W**

**St Andrews House**

**0131 244 8074**

**Document 14**

**From:** Slater E (Emma)  
**Sent:** 08 November 2018 10:21  
**To:** Green E (Eric)  
**Subject:** FOI/18/03284 Draft Response

Eric,

First draft of my FOI(S)A response. Grateful if you could consider and provide comments.

Thank you,

E

NB. Attached draft provided as 14 (a) below.

## Document 14 (a)

Constitution and Cabinet Directorate  
Elections and FOI Division



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

T: 0131-244-8074  
E: Emma.Slater@gov.scot

██████████  
Sent via Email to:  
request ██████████ -  
██████████@whatdotheyknow.com

Our ref: Fol/18/03284

Xx November 2018

Dear ██████████,

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

Thank you for your request dated 4 November 2018 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### **Your request**

Please provide the following Scottish Government statistics:

For the period 1 April 2018 to 30 September 2018

(A) The number of responses\* to FOI requests that included use of the FOISA Public Interest Test. Please list the number of responses by FOISA exemption category (an exemption category being a FOISA section reference – such as section 30(c): effective conduct of public affairs).

(B) For each FOISA exemption category in (A), please disclose the outcome of the Public Interest Test, specifically:

- The number of responses in favour of withholding information
- The number of responses in favour of disclosing information

\* The statistics should include only first responses to FOI requests and not those arising from internal reviews.

## **Response to your request**

From 1 April 2018 to 30 September 2018, we responded to 1579 requests and the Public Interest test was applied 181 times.

The below table details the exemptions applied and whether or not they favoured disclosure – we would wish you to note that the parameters of our reporting system has allowed us to confirm instances where just one of the Public Interest exemptions was applied but there are instances where multiple exemptions are applied in one response and therefore we have included an extra row depicting such.

| <b>Public Interest Exemption</b> | <b>Partial Disclosure</b> | <b>Refusal notice</b> |
|----------------------------------|---------------------------|-----------------------|
| 27(1)                            | 3                         | 5                     |
| 27(2)                            | 1                         | 0                     |
| 28                               | 1                         | 3                     |
| 29(1)(a)                         | 12                        | 4                     |
| 29(1)(c)                         | 1                         | 1                     |
| 30(b)(1)                         | 16                        | 3                     |
| 30(b)(2)                         | 9                         | 0                     |
| 30(c)                            | 3                         | 6                     |
| 33(1)(a)                         | 1                         | 0                     |
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| 35                               | 0                         | 1                     |
| 36(1)                            | 3                         | 2                     |
| 39(1)                            | 2                         | 0                     |
| 39(2)                            | 1                         | 0                     |
| 41(a)                            | 1                         | 0                     |
| Multiple Exemptions              | 73                        | 12                    |
| <b>TOTALS</b>                    | <b>140</b>                | <b>41</b>             |

These figures have been extracted from our Freedom of Information Tracker database. As these exemptions are entered by casehandlers we cannot confidently attest as to their accuracy.

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. There may have been instances where the Public Interest test was performed and it weighed in the interest of full disclosure, however, we do not record such and therefore cannot confirm the number of times this may have applied.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

### **Your right to request a review**

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David Rogers  
Director of Strategy & Constitution  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG  
[david.rogers@gov.scot](mailto:david.rogers@gov.scot)

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<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Kind Regards

Emma Slater  
Caseworker

**Document 15**

**From:** Slater E (Emma)

**Sent:** 09 November 2018 10:43

**To:** Green E (Eric)

**Subject:** Take 2

Please and thank you.

E

NB. Attached draft provided as 15 (a) below.

**Document 15 (a)**

Constitution and Cabinet Directorate  
Elections and FOI Division



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

T: 0131-244-8074  
E: Emma.Slater@gov.scot

██████████  
Sent via Email to:  
request ██████████ -  
██████████@whatdotheyknow.com

Our ref: Fol/18/03284

Xx November 2018

Dear ██████████,

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

Thank you for your request dated 4 November 2018 under the Freedom of Information (Scotland) Act 2002 (FOISA).

**Your request**

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For the period 1 April 2018 to 30 September 2018

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| 30(c)                            | 3                         | 6                     |
| 33(1)(a)                         | 1                         | 0                     |
| 33(1)(b)                         | 13                        | 4                     |
| 35                               | 0                         | 1                     |
| 36(1)                            | 3                         | 2                     |
| 39(1)                            | 2                         | 0                     |
| 39(2)                            | 1                         | 0                     |
| 41(a)                            | 1                         | 0                     |
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Edinburgh  
EH1 3DG  
[david.rogers@gov.scot](mailto:david.rogers@gov.scot)

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Kind Regards

Emma Slater  
Caseworker