

From: McGregor R (Rachel)
Sent: 29 November 2018 12:47
To: [REDACTED]
Subject: FW: Review of FOI – 18 – 180276

Hi [REDACTED]

Would you be free to chat this afternoon about an FOI review I'm undertaking. I'm on 07780492410 or I can call you if that is easier. I'm free until 1 and then any time after 2:30.

Thanks
Rachel

Rachel McGregor |**HR Business Partner**| DG Education, Communities and Justice |Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: McGregor R (Rachel)
Sent: 27 November 2018 12:43
To: [REDACTED]
Subject: RE: Review of FOI – 18 – 180276

Hi [REDACTED]

Thanks very much, I will give her a call.

Rachel

Rachel McGregor |**HR Business Partner**| DG Education, Communities and Justice |Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: [REDACTED]
Sent: 27 November 2018 12:31
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Subject: RE: Review of FOI – 18 – 180276

Hi Rachel
You'd probably be best to talk to [REDACTED] on ext. [REDACTED]

Regards

[REDACTED]

From: McGregor R (Rachel)
Sent: 27 November 2018 12:26
To: [REDACTED]
Cc: [REDACTED]
Subject: Review of FOI – 18 – 180276

Hi [REDACTED]

I'm undertaking a review of FOI – 18 – 180276. I haven't undertaken a review for over a year and would welcome a chat on how best to respond. Can you let me know who the best person to talk to is?

Also, I understand that staff in the FOI unit have provided advice on responses to requests about sexual harassment, do you know who has been involved in giving that advice?

Thanks
Rachel

Rachel McGregor | **HR Business Partner** | DG Education, Communities and Justice | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED]
Sent: 20 November 2018 10:50
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: FOI-18- 03160 required for publication

Hello Rachel
Would you please send me a copy of the above FOI response you closed on 19/11
Please include any attachments.

Many thanks

[REDACTED]

[REDACTED] | Freedom of Information Unit | Scottish Government | 2W, St Andrew's House |
Regent Road | Edinburgh | EH1 3DG | ☎ [REDACTED]

From: [REDACTED]
Sent: 07 December 2018 15:36
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

Rachel,

That depends entirely on why the decision was reached in the first place, I'm afraid! Have you had sight of the [REDACTED] The use of section 18 (neither confirm nor deny) is unusual and difficult, and without seeing what informed the original decision it's difficult to know what to put in a review response that upholds it.

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel)
Sent: 07 December 2018 15:23
To: [REDACTED]
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

[REDACTED]

I've no spoken to [REDACTED] and other colleagues about this and I'm minded to uphold the original decision. However I'm still waiting for one piece of information from the people division, which may have an impact.. I've started drafting my response based on the templates provided but wondered if you had any good examples of what should be contained in the response if you are upholding an decision.

Thanks
Rachel

Rachel McGregor |HR Business Partner| DG Education, Communities and Justice |Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: [REDACTED]
Sent: 05 December 2018 14:27
To: McConnell J (James) (HR) <James.McConnell2@gov.scot>; McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

James, Rachel,

Thanks – this is helpful. I've had a useful discussion with Rachel about how to take things forward and we will be happy to assist further to get this review issued timeously.

We will look forward to seeing the review response for clearance, but if anything arises before then we would be happy to discuss.

[REDACTED]
[REDACTED]
[REDACTED] | Head of Policy | Freedom of Information Unit
[REDACTED]

From: McConnell J (James) (HR)
Sent: 05 December 2018 13:03
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>; [REDACTED]
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

The unredacted e-mail referred to below is attached.

James

From: McGregor R (Rachel)
Sent: 05 December 2018 12:57
To: [REDACTED] McConnell J (James) (HR) <James.McConnell2@gov.scot>
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

Hi [REDACTED]

I just tried to give you a call. I'm on 44407 and free until 2pm.

Thanks
Rachel

From: [REDACTED]
Sent: 05 December 2018 10:17
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED] McConnell J (James) (HR) <James.McConnell2@gov.scot>
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

Rachel,

Thanks – think it would be as well if we had a chat. It looks like you're pretty solidly in meetings today but I should be free from 12 onwards if you have a moment. Otherwise my calendar is essentially clear tomorrow, but I'm conscious that you only have a week to go with this review. As James responded (the tracker does not show him as case handler), and in light of the following, I'm copying him in to see if he can shed any light.

[REDACTED] has just identified that there was a meta-request about this request (i.e. one that asked for information about how the case was handled). It's FOI/18/03175. There is nothing on the file apart from the final response. That's almost the same for this case, and this is something you should consider as part of your review of how this case was handled.

The interesting thing from the meta-request is that we released a very heavily redacted email exchange between James and [REDACTED]. James' email was sent at 10.43 on 28 September and says "[REDACTED] has confirmed that she is content with the application of exemptions in this case." So if we can locate the unredacted copy of that email (which should be in the files for both FOI/18/02676 and FOI/18/03175) then we will know who has advised. In the usual course of events, legal advice about FOI ought to have been obtained by the Unit from [REDACTED] division, but

we would have a record of having requested it. I assume it is not [REDACTED] herself who has advised as her name would not have been redacted.

Happy to discuss.

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel)
Sent: 05 December 2018 09:02
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: FOI/18/02676 - review - query about FOI Unit advice

Hi [REDACTED]

The first thing I did was speak to James McConnell who provided the response. He said that there was advice from the FOI team on responses to a spate of requests about sexual harassment. He could not remember who gave him the advice. That's why I got in touch with the FOI team last week to try and find that advice.

[REDACTED]

Happy to discuss if that is easier.

Thanks
Rachel

Rachel McGregor | **HR Business Partner** | DG Education, Communities and Justice | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED]
Sent: 04 December 2018 13:12
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: FOI/18/02676 - review - query about FOI Unit advice

Rachel,

I understand that you spoke to [REDACTED] last Thursday to ask if we had a copy of the advice given by FOI Unit to the case handler in the above case, and that [REDACTED] had come back to you to ask you to check with the case handler who had given the advice in question.

[REDACTED] has now moved post, so I'm picking this up instead. Have you had an opportunity to speak to the case handler yet? There's very little in the eRDM file, so we don't have much to go on at this end.

I'd be grateful if you could let me have an update.

Many thanks,

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

Scottish Government | 2W | St Andrew's House | Regent Road | Edinburgh | EH1 3DG

[REDACTED]

From: McGregor R (Rachel)
Sent: 11 December 2018 10:53
To: [REDACTED]
Subject: RE: REPLY BY 1000 MONDAY 10/12 - FOI requests/reviews due in the next fortnight

Hi [REDACTED]

Fol/18/02676

I need to speak to [REDACTED] again today. I should have a draft with the FOI unit by the end of the day. The original was cleared at Directorate level.

Thanks
Rachel

Rachel McGregor |HR Business Partner| DG Education, Communities and Justice |Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: [REDACTED]
Sent: 10 December 2018 14:39
To: [Redacted distribution list]
Subject: FW: REPLY BY 1000 MONDAY 10/12 - FOI requests/reviews due in the next fortnight

Good Afternoon,

As per the below, grateful for remaining updates by 10am Tuesday 11 December please.

Thank you,

[REDACTED]

From: [REDACTED]
Sent: 07 December 2018 12:44
To: [Redacted distribution list]
Subject: REPLY BY 1000 MONDAY 10/12 - FOI requests/reviews due in the next fortnight

Good Afternoon,

Apologies for the confusion with this today, grateful if updates could be resubmitted.

As per previous communications, following criticism from the Scottish Information Commissioner concerning unsatisfactory FOI performance in the Scottish Government, we require weekly updates on the progress of live FOI requests. This covers all FOI/EIRs requests and reviews due within the

following 2 weeks and involves following up cases where there is uncertainty that deadlines will be met or there is insufficient information about progress. This will allow the Minister for Parliamentary Business and Veterans to have proactive oversight of FOIs and ensure Ministers are provided with fuller information on the state of cases in progress.

According to the FOI Tracker you have an FOI/EIRs request or review due within the next two weeks (see below). At this stage all cases should be with Ministers for clearance (unless the response does not require Ministerial clearance). Please let me know which of the following applies to any cases you have due in the next fortnight:

- * I am still awaiting information for this case to be provided by [name of official or policy area] before I can continue.
- * My response is still being drafted and will be ready for clearance by [date]
- * My response is still being drafted, will not require clearance and will be ready to issue on time.
- * My case is currently with the FOI Unit – it was sent to them on [date]
- * My case is currently with Spads – it was sent to Spads PO on [date]
- * My case is currently with [identify Minister] – it was sent there on [date]
- * My case does not require further clearance and will be ready to issue on time.

If there are difficulties in handling, please indicate what they are and what help you need to progress the case. If it is simply administrative reasons, please confirm the response will be with Ministers within 2 working days.

This information will be added to the weekly update informing Ministers & DGs of the state of play for FOI/EIRs cases. It is critical that the most up-to-date information possible is provided so that the Minister for Parliamentary Business can follow up cases, as appropriate. Please respond to this email by 10am Monday 10 December (or as soon as possible thereafter).


If responses could be provided on behalf of absent colleagues where possible, it would be appreciated.

[Redacted list of FOIs]


FoI/18/0 2676	McGregor R (Rachel)	details of the number of reports within the SG in 2018 of sexual harassment or any form of abuse, including the number that resulted in dismissals, resignations or	Review	13/12/2018	DIRECTORATE FOR PEOPLE
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Thank you,

Regards


Casework Officer
Freedom of Information Unit
2W
St Andrews House



Attachments	 FOI - ODO - FoI 18 02...
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From: McGregor R (Rachel)
Sent: 12 December 2018 19:07
To: Freedom of Information <foi@gov.scot>
Subject: FOI/18/02676 Review Response for Clearance

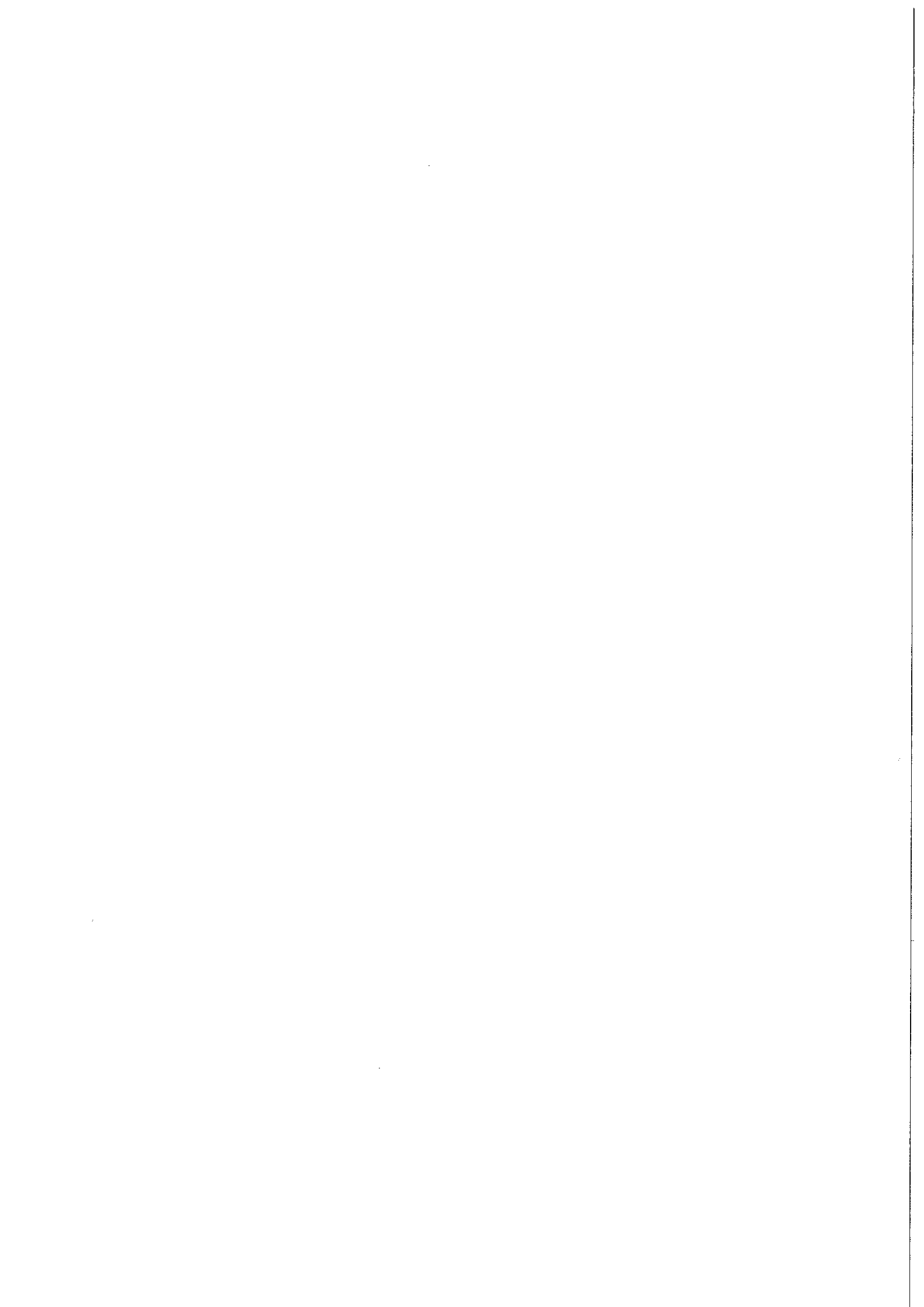
Hi

This review response is due to be issued tomorrow (13/12/18). It has been cleared at Official level subject to advice from [REDACTED].

I'm awaiting a response from [REDACTED]

Thanks
Rachel

Rachel McGregor |**HR Business Partner**| DG Education, Communities and Justice |
Directorate for Agriculture and Rural Economy|Scottish Government|1W.09A|St Andrew's
House|Ext 44407| Blackberry: 07780492410



People Directorate
People Division



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0131-244 4407
E: Rachel.mcgregor@gov.scot

David Bateman

By email: davidbateman13@gmail.com

Our ref: Fol/18/02676
12 December 2018

Dear Mr Bateman

Response to request for review of original response

Further to my letter of 21st November I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for

Details of the number of reports within the Scottish Government in 2018 of sexual harassment or any form of abuse, including the number that resulted in dismissals, resignations or ongoing police enquiries.

I have concluded that the original decision should be confirmed, without modifications.

I have reviewed the information which has already been provided to you as well as the exemptions and the public interest test which were applied in this case and I am of the opinion that these are still valid. These exemptions are summarised below:

By reference to section 18(1) of FOISA we cannot confirm or deny whether any information is held. We are applying section 18(1) in conjunction with section 35(1)(c) (information exempt if disclosure would, or would be likely to prejudice substantially the administration of justice) and section 38(1)(b) (personal data).

The exemption in section 35(1)(c) is subject to the public interest test. We have viewed the public interest test to be the balance between the need to be open and transparent in our decision making and ensuring that we do not prejudice substantially the administration of justice. In that regard we cannot confirm or deny if any such information exists and we have concluded that the balance favours adopting that approach.

The exemption in section 38(1)(b) is not subject to the public interest test but we have applied the public interest as required by section 18 and have concluded that to reveal whether the information exists or not would be contrary to the public interest.

The Annex that was provided as part of the original response stated the number of reports

“Since 2007, a total of 11 formal complaints of this nature have been received by the Scottish Government. Given the statistically low number, the supplementary information requested cannot be provided as this may risk disclosing personal information. However we can confirm that these cases were dealt with in line with the relevant internal procedures”

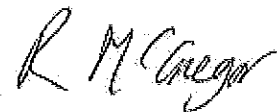
If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresp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

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

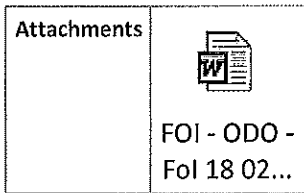
E-mail: enquiries@itspublicknowledge.info
Telephone: 01334 464610

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



Rachel McGregor



From: McGregor R (Rachel)
Sent: 14 December 2018 16:03
To: [Redacted]
Cc: [Redacted]
Subject: RE: REPLY BY 1000 MONDAY 17/12- Overdue FOI requests/reviews

Hi [Redacted]

[Redacted] – I tried to call you back, I'll be on my bb on Monday 07780492410

Here is my response. I am awaiting a response from [Redacted] and from the FOI unit (I sent it on Wednesday but haven't heard back).

Thanks
Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Directorate for Agriculture and Rural Economy | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 |
Blackberry: 07780492410

From: [Redacted]
Sent: 14 December 2018 08:31
To: [Redacted distribution list]
Subject: REPLY BY 1000 MONDAY 17/12- Overdue FOI requests/reviews

Good morning,

According to the FOI Tracker you have an FOI/EIRs request or review overdue (see below). Please let me know which of the following applies to any overdue cases you have:

* I am still awaiting information for this case to be provided by [name of official or policy area] before I can continue.

* My response is still being drafted and will be ready for clearance by [date]

- * My response is still being drafted, will not require clearance and will be ready to issue by [date]
- * My case is currently with the FOI Unit – it was sent to them on [date]
- * My case is currently with Spads – it was sent to Spads PO on [date]
- * My case is currently with [identify Minister] – it was sent there on [date]
- * My case does not require further clearance and will be issued today.

If there are difficulties in handling, please indicate what they are and what help you need to progress the case.

This information will be added to the weekly update informing Ministers & DGs of the state of play for FOI/EIRs cases. It is critical that the most up-to-date information possible is provided. Could you therefore please provide the current status of any overdue case(s) by 10am Monday 17 December (or as soon as possible thereafter).

[Redacted list of FOIs]

FoI/18/0 2676	McGregor R (Rachel)	details of the number if reports within the SG in 2018 of sexual harrassment or any form of abuse, including the number that resulted in dismissals, resignations or	Review	13/12/2 018	DIRECTORA TE FOR PEOPLE
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Thank you,

Regards

[Redacted signature]

Casework Officer
Freedom of Information Unit
2W
St Andrews House

[Redacted contact information]

People Directorate
People Division



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0131-244 4407
E: Rachel.mcgregor@gov.scot

David Bateman

By email: davidbateman13@gmail.com

Our ref: Fol/18/02676
12 December 2018

Dear Mr Bateman

Response to request for review of original response

Further to my letter of 21st November I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for

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I have concluded that the original decision should be confirmed, without modifications.

I have reviewed the information which has already been provided to you as well as the exemptions and the public interest test which were applied in this case and I am of the opinion that these are still valid. These exemptions are summarised below:

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The exemption in section 35(1)(c) is subject to the public interest test. We have viewed the public interest test to be the balance between the need to be open and transparent in our decision making and ensuring that we do not prejudice substantially the administration of justice. In that regard we cannot confirm or deny if any such information exists and we have concluded that the balance favours adopting that approach.

The exemption in section 38(1)(b) is not subject to the public interest test but we have applied the public interest as required by section 18 and have concluded that to reveal whether the information exists or not would be contrary to the public interest.

The Annex that was provided as part of the original response stated the number of reports

“Since 2007, a total of 11 formal complaints of this nature have been received by the Scottish Government. Given the statistically low number, the supplementary information requested cannot be provided as this may risk disclosing personal information. However we can confirm that these cases were dealt with in line with the relevant internal procedures”

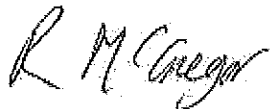
If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner’s website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresp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



Rachel McGregor

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot>

Sent: 10 January 2019 14:52

To: [REDACTED]

Subject: FW: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit further advice on scope

Hi [REDACTED]

Further information from [REDACTED]

Thanks

Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED] >>

Sent: 10 January 2019 12:50

To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >; [REDACTED]

Cc: Mackinnon J (Judith) <Judith.Mackinnon@gov.scot <<mailto:Judith.Mackinnon@gov.scot>> >;

Bruce MG (Maureen) <Maureen.Bruce@gov.scot <<mailto:Maureen.Bruce@gov.scot>> >

Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit further advice on scope

Hi Rachel

On [REDACTED] first point about interpretation the only way to know what the requester means would be to ask him. If however we do take the wider view advocated by [REDACTED], that the requester is asking about abuse in general then this holds a level of subjectivity and we don't / wouldn't make this assessment therefore can we say that we don't hold this information. We do categorise fairness at work complaints as bullying, harassment or 'other' but this appears a moot point to an extent given [REDACTED] advice about categorisation and the expectations on the requester.

On the outcomes of a formal complaint we do hold this information. Given we are talking about such small numbers there is a danger of identification and so I'm in agreement with the assessment that an exemption on that basis should apply.

I hope this helps for your conversation with [REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >

Sent: 10 January 2019 11:31

To: [REDACTED]

Cc: Mackinnon J (Judith) <Judith.Mackinnon@gov.scot <<mailto:Judith.Mackinnon@gov.scot>> >;

Bruce MG (Maureen) <Maureen.Bruce@gov.scot <<mailto:Maureen.Bruce@gov.scot>> >

Subject: FW: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit further advice on scope
Importance: High

Hi [REDACTED]

See email from [REDACTED] asking for further clarification.

Thanks
Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Scottish
Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED] >
Sent: 10 January 2019 11:11
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>>>
Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit further advice on scope

Rachel,

Thanks for this – it is helpful. However, I think we will need to ask for a little more from [REDACTED] because we have a statutory duty to provide advice and assistance to the requester under section 15 of FOISA. That duty, coupled with what the Ministers' own Code of Practice <<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/e8e4fb4a-d101-40c4-aa33-388776b952d8/e8e4fb4a-d101-40c4-aa33-388776b952d8/govscot%3Adocument>> for public authorities says, means that we have to consider whether we hold the information requested, even if the requester has not used exactly the language we would use to describe it.

The Code says (para 5.3.1):

“The authority should remember that applicants cannot reasonably be expected to always possess identifiers such as file reference numbers or the description of a particular record. Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek.” [my emphasis]

The question for [REDACTED] is therefore: how do we characterise complaints? We presumably characterise some as “sexual harassment”, but what other categories do we use?

As to how we should interpret “other forms of abuse”, I think the phrase has to be given its ordinary meaning. While it can connote sexual assault or maltreatment (sense 6(a) in the OED definition), that would in my view be excluded by the reference to “other forms of abuse” following on from sexual harassment. In other words, we are looking at forms of abuse other than sexual ones. The relevant sense would therefore appear to be sense 6(b): “Physical or mental maltreatment; the inflicting of physical or emotional harm or damage.”

Separately, in my previous advice I commented “I do think, however, that you may be on stronger ground in applying exemptions to the second part of the request, i.e. about the outcomes of the reports. However, this is entirely dependent on whether we hold any information about the outcomes mentioned by the requester.” Has [REDACTED] (or other colleagues) been able to give any indication about whether we hold that information? We can only apply an exemption to information that we hold, so it is important that we know.

Are colleagues joining us to discuss this afternoon?

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Sent: 10 January 2019 10:11
To: [REDACTED] >
Subject: FW: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Hi [REDACTED]

Here is the response from People Advice colleagues to your questions.

Will this suffice for a response or do you think we need more?

Thanks
Rachel

Rachel McGregor |HR Business Partner| DG Education, Communities and Justice|Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: [REDACTED]
Sent: 09 January 2019 17:00
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >; [REDACTED]
Cc: Mackinnon J (Judith) <Judith.Mackinnon@gov.scot <<mailto:Judith.Mackinnon@gov.scot>> >; Bruce MG (Maureen) <Maureen.Bruce@gov.scot <<mailto:Maureen.Bruce@gov.scot>> >
Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Hi Rachel

Thanks for prompting, apologies this came in over leave so I hadn't yet seen the advice from the FOI unit until now. In terms of the actual question from the requester he asks for sexual harassment or any form of abuse, I'm not clear as to whether we should interpret this as 'general' abuse (which could be defined really widely) or sexual abuse. We don't categorise complaints as either and if it was the latter it wouldn't be for us to determine.

If the interpretation is sexual abuse the definition will be in legislation but a quick google in Collins dictionary states this as:

sexual abuse
uncountable noun

If a child or other person suffers sexual abuse, someone forces them to take part in sexual activity with them, often regularly over a period of time.

On that basis I think we could hold the line used in the PQ S5W-18396:

'as an employer, the Scottish Government does not make determinations about whether the nature of a complaint constitutes a sexual assault as that is rightly a matter for Police Scotland to determine. We do not therefore have a record of any complaints that have been recorded as sexual assault' (replacing this with abuse)

I wonder if it's worth testing the interpretation point with [REDACTED] but if we take the wider interpretation of 'abuse' then we don't categorise complaints as such either. I hope this makes sense and happy to chat over tomorrow morning, let me know if you need anything further.

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Sent: 09 January 2019 16:00

To: [REDACTED]

Cc: Mackinnon J (Judith) <Judith.Mackinnon@gov.scot <<mailto:Judith.Mackinnon@gov.scot>> >;
Bruce MG (Maureen) <Maureen.Bruce@gov.scot <<mailto:Maureen.Bruce@gov.scot>> >
Subject: FW: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Hi [REDACTED]

This FOI review is still outstanding, I emailed the request from the FOI unit on the 22nd December. I know that you have been really busy but I'm scheduled to meet with [REDACTED] from the FOI unit tomorrow afternoon to discuss and hopefully finalise a response.

Can you provide the information that [REDACTED] has requested below, if you are unable to do this for tomorrow can you let me know when you will have his information.

I'm on 07780492410 if it is easier to talk through this.

I understand that your colleagues have subsequently advised that there were [REDACTED] recorded cases of sexual harassment in SG core in 2018. It appears to me that this only partly addresses the request for information: the requester asked about "sexual harassment or any form of abuse".

It would therefore be helpful if you could ask colleagues to confirm how many reports there have been of any form of abuse within SG in 2018.

Colleagues do not appear to have advised as to the outcome of the cases that they mention. It may be that this information is not held – particularly if the investigations into the reports have not concluded. However, in order to respond properly to the request (and review) it is first necessary to know what information the Scottish Government holds. The Commissioner is clear that we cannot apply exemptions to information that does not exist.

It would therefore be helpful if you could ask colleagues to confirm whether we hold any information as to the outcome of these reports (including any other reports that relate to abuse rather than sexual harassment).

Thanks

Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Scottish

From: [REDACTED]
Sent: 21 December 2018 15:37
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Rachel,

If it's the 9th, grateful if it could be no earlier than 2.30 (if SAH) or 3 (if VQ) as I'm in Glasgow before that.

Many thanks,

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Sent: 21 December 2018 13:48
To: [REDACTED] >>
Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Hi [REDACTED]

I've sent the holding reply, how about meeting on the 9th of January?

We should have the information by then.

I really appreciate all your help with this.

Thanks
Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Directorate for Agriculture and Rural Economy | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED] >
Sent: 21 December 2018 13:05
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Cc: [REDACTED]

[REDACTED]

Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Rachel,

Many thanks. I'd suggest the following by way of holding response:

"I refer to my email of 21 November 2018 about your request for a review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for the following information:

"Details of the number of reports within the Scottish Government in 2018 of sexual harassment or any form of abuse, including the number that resulted in dismissals, resignations or ongoing police enquiries."

Under section 21(1) of FOISA, our response to your review request was due on 13 December 2018. Unfortunately, it is taking longer than expected to carry out the review because the interaction between the exemptions relied on is complex and it is important to ensure that our review response fully considers and addresses your reasons for dissatisfaction. I apologise for this delay and hope to be able to send you my decision shortly after the holiday period."

Any views on when would suit you to meet to discuss? I appreciate this will be somewhat contingent on the information coming back and the availability of others.

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >

Sent: 21 December 2018 12:56

To: [REDACTED]

Subject: RE: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Hi Graham

I have logged in for a couple of hours today. I will forward your email to the people in the People Advice unit who hold the information.

I will also send a holding reply, any help with wording would be appreciated.

Thanks
Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Directorate for Agriculture and Rural Economy | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED]
Sent: 20 December 2018 17:00
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <mailto:Rachel.McGregor@gov.scot> >
Cc: [REDACTED]

Subject: FOI/18/02726 - FOR REPLY - FOI requests/reviews - FOI Unit consideration of draft review response

Rachel,

I'm grateful to you for including the additional material in the eRDM file and for sending your review response to us for clearance. Thanks also for our discussion earlier this afternoon.

I have now considered your review response in which you propose to confirm the original decision without modifications and would offer the following comments. I'm copying [REDACTED] as I understand you put the review response to her for comment at the same time as us.

Background

On 12 September 2018, Mr Bateman made the following request for information:

Details of the number of reports within the Scottish Government in 2018 of sexual harassment or any form of abuse, including the number that resulted in dismissals, resignations or ongoing police enquiries.

On 10 October 2018, we responded by applying section 18(1) (neither confirm nor deny) of FOISA, in conjunction with the exemptions in sections 35(1)(c) (substantial prejudice to the administration of justice) and 38(1)(b) (personal information).

We also supplied with that response a copy of the response to a recent PQ (S5W-18396). The PQ asked for information on how many complaints SG has received relating to sexual assault or sexual harassment by (a) Ministers, (b) Special Advisers and (c) its staff since 1999, and went on to ask about the outcomes of those complaints. The response could usefully have stated explicitly that this information was being provided outwith FOISA, as it is not the information that the requester asked for.

On 14 November 2018, the requester sought a review of that decision. He expresses dissatisfaction with our application of section 18 and with our application of the public interest test. The review is accordingly formally valid.

Subsequent developments

We have discussed on a number of occasions what a reviewer requires to do when carrying out a review. In particular, we discussed the need for you to a) have sight of any relevant information within scope of the request and b) understand the reasoning for the original decision.

We also clarified that, although the FOI Unit would normally be consulted where the application of section 18 was contemplated, this did not take place in this case and advice was instead obtained from [REDACTED]

What information is there within scope?

I understand that your colleagues have subsequently advised that there were [REDACTED] recorded cases of sexual harassment in SG core in 2018. It appears to me that this only partly addresses the request

for information: the requester asked about "sexual harassment or any form of abuse".

It would therefore be helpful if you could ask colleagues to confirm how many reports there have been of any form of abuse within SG in 2018.

Colleagues do not appear to have advised as to the outcome of the cases that they mention. It may be that this information is not held – particularly if the investigations into the reports have not concluded. However, in order to respond properly to the request (and review) it is first necessary to know what information the Scottish Government holds. The Commissioner is clear that we cannot apply exemptions to information that does not exist.

It would therefore be helpful if you could ask colleagues to confirm whether we hold any information as to the outcome of these reports (including any other reports that relate to abuse rather than sexual harassment).

Application of exemptions

The original decision was to refuse the request under reference to section 18(1) of FOISA. That provision applies where a) we could apply certain exemptions to information if it existed and b) we consider that revealing whether the information exists would be contrary to the public interest. In those circumstances, we can neither confirm nor deny whether we hold any information.

The exemptions relied upon were section 35(1)(c) (substantial prejudice to the administration of justice) and section 38(1)(b) (personal information).

I understand that [REDACTED] has since explained the approach was taken. In her email of 12 December to you, she comments that [REDACTED]

Section 38(1)(b) (information not held)

The question is then whether that figure constitutes personal data in terms of Article 4 GDPR. Shortly put, that is information relating to an identified or identifiable natural person. The Commissioner's guidance <<http://itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=661&SID=133>> addresses whether the disclosure of numbers will lead to living individuals being identified, and points out that if it does then the information will be the personal data of those individuals.

The Commissioner has pointed to the test identified by the Court of Justice of the European Union: is there a realistic prospect of someone being identified? We can take into account information in the hands of third parties, but there must be a realistic causal chain between the disclosure and identification.

Unless we can say that there is a realistic prospect of someone being identified as a result of us disclosing the number of reports, we do not consider that the application of the exemption in section 38(1)(b) can be upheld.

Section 35(1)(c) (substantial prejudice to the administration of justice)

Again, the question is whether disclosing the number of reports would constitute substantial prejudice to the administration of justice. Two points arise in relation to the application of this exemption.

First, it is not clear to us what the substantial prejudice that would arise from disclosing a figure is. Indeed, as [REDACTED] notes, we have disclosed a related figure (albeit not the one that the requester has asked for) in response to a PQ. The Commissioner's section 35 guidance makes it clear that the damage resulting from disclosure must be of real and demonstrable significance, rather than simply marginal. It must also be supported by evidence.

It would therefore be helpful to know what damage of real and demonstrable significance would arise from disclosing the number of reports. It would also be helpful to know how we can evidence this.

[REDACTED]

Section 18

Returning to section 18, we can only refuse to answer under this provision where certain exemptions would apply to the information if it existed.

[REDACTED]

If however the exemptions can be applied, we would still need to be of the opinion that revealing whether the information exists or is held would be contrary to the public interest.

[REDACTED]

It would therefore be helpful to understand why it is considered to be contrary to the public interest to reveal whether this information exists or is held.

Handling of review

I do think, however, that you may be on stronger ground in applying exemptions to the second part of the request, i.e. about the outcomes of the reports. However, this is entirely dependent on whether we hold any information about the outcomes mentioned by the requester.

It would therefore be helpful if you could explore with colleagues the various queries highlighted above. Indeed, I wonder whether the best way forward might be to arrange a meeting with [REDACTED] and [REDACTED] to discuss all of these points. I am conscious however that you are now on leave and so we are unlikely to get anything arranged (or responses to these points) until the New Year.

If you agree, I think it would be helpful if we could meet as early as possible in the New Year. I'm nominally on leave on 3 and 4 January but could come in if everyone else is available as I will be in Edinburgh anyway.

Separately, I think it would be prudent to send a holding response <http://sgsharepoint/sites/freedomofinformation/Guidance/FOISA%20Review%20Templates/FOISA%20Holding%20response%20when%20review%20deadline%20is%20going%20to%20be%20missed.doc> to the requester now. By way of reasoning, you might indicate that the interaction between the exemptions relied on is complex, that it is important to ensure that the review response fully considers and addresses his reasons for dissatisfaction. On timescales, I suspect it would be safest to say "shortly" rather than a specific date – or perhaps "shortly after the impending holiday period" which might give a little more flexibility. [REDACTED] – in Rachel's absence, could you please take this forward? I'm happy to assist with wording etc but the holding response should issue from the business area, not the FOI Unit.

Happy to discuss.

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>>>

Sent: 20 December 2018 11:54

To: [REDACTED]

Subject: RE: FOR REPLY - FOI requests/reviews

Hi [REDACTED]

Just tried to call you, I'm on 07780492410 until 10'clock and then on leave. I've updated the eRDM folder so it has all the emails I have sent, so you have follow the correspondence. I've still not heard from [REDACTED]

If it is ok to send out the response but I'm on leave [REDACTED] is the HR contact over the Christmas period. I'm back on the 3rd of Jan.

Thanks

Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Directorate for Agriculture and Rural Economy | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED] >
Sent: 19 December 2018 18:56
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Subject: RE: FOR REPLY - FOI requests/reviews

Rachel,

Sorry I missed you – I've been in and out of meetings all day so not the easiest to get hold of. Tomorrow does however look a bit better so please give me a call when you're free.

Thanks,

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >
Sent: 19 December 2018 08:55
To: [REDACTED]
Subject: RE: FOR REPLY - FOI requests/reviews

[REDACTED]

I'm unavailable this morning but will call this afternoon.

Thanks
Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Directorate for Agriculture and Rural Economy | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

From: [REDACTED] >
Sent: 18 December 2018 17:37
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >;
[REDACTED]
Subject: RE: FOR REPLY - FOI requests/reviews

Rachel,

Grateful for a quick word about this tomorrow if that would be possible please. It would be useful to

get a better understanding of what the position is with this case following our last discussion, as the case file doesn't give me much to go on. Tomorrow is looking rather busy but I should be in by 9 if you were around then for a chat. Otherwise I'm likely to have a little time between 10 and 11, or after 1.30.

Thanks,

[REDACTED]

P.S. I've checked with the team as you mentioned you'd sent this to us last Wednesday. Did you send it to the FOI mailbox? We can't find it there, and no-one recalls having dealt with it, but there are occasional glitches with the inbox. In any event, apologies that we'd not picked it up before.

[REDACTED] | Head of Policy | Freedom of Information Unit

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot <<mailto:Rachel.McGregor@gov.scot>> >

Sent: 18 December 2018 17:06

To: [REDACTED]

Subject: FOR REPLY - FOI requests/reviews

Hi

Are you ok for me to issue this response?

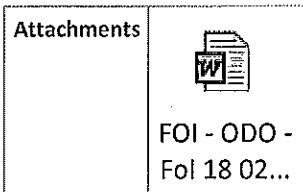
I'm planning to be on leave from tomorrow evening.

Thanks

Rachel

Rachel McGregor | HR Business Partner | DG Education, Communities and Justice | Scottish Government | 1W.09A | St Andrew's House | Ext 44407 | Blackberry: 07780492410

<< File: FOI - ODO - Fol 18 02676 - David Bateman - Review Response.doc >>



From: [REDACTED]
Sent: 10 January 2019 20:23
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Subject: RE: FOI/18/02676 - review response - FOI Unit clearance

Confirmed – thank you!

[REDACTED] | Head of Policy | Freedom of Information Unit

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Sent: 10 January 2019 20:23
To: [REDACTED]
Subject: RE: FOI/18/02676 - review response - FOI Unit clearance

I'm happy with those changes and I will now assume that this has been cleared by the FOI unit.

Thanks
Rachel

Rachel McGregor |HR Business Partner| DG Education, Communities and Justice|Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: [REDACTED]
Sent: 10 January 2019 17:12
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: RE: FOI/18/02676 - review response - FOI Unit clearance

Rachel,

Many thanks – I've made some tweaks but hopefully nothing too major.

If you're content with them, then I'm happy to clear the response for the FOI Unit's interests.

[REDACTED] | Head of Policy | Freedom of Information Unit

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Sent: 10 January 2019 16:58
To: [REDACTED]

Subject: FOI/18/02676 - review response

Hi [REDACTED]

Here is my response, grateful if you could have a look before I forward to Nicky for clearance.

Thanks
Rachel

Rachel McGregor |**HR Business Partner**| DG Education, Communities and Justice|Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

People Directorate
People Division



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0131-244 4407
E: Rachel.mcgregor@gov.scot

David Bateman

By email: davidbateman13@gmail.com

Our ref: Fol/18/02676
10 January 2019

Dear Mr Bateman

Response to request for review of original response

Further to my email of 21st December, I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for:

“Details of the number of reports within the Scottish Government in 2018 of sexual harassment or any form of abuse, including the number that resulted in dismissals, resignations or ongoing police enquiries.”

I apologise for the delay in responding to your request. Unfortunately, it took longer than expected to carry out the review because the interaction between the exemptions relied on was complex and it was important to ensure that our review response fully considered and addressed your reasons for dissatisfaction.

I have concluded that a different decision should be substituted.

The answer to your question about the number of reports within the Scottish Government in 2018 of sexual harassment is that there were ■

While our aim is to provide information wherever possible, in this instance Scottish Government does not have some of the information you have requested. We do not have information of number of reports of “any other forms of abuse” because we categorise our reports as bullying, harassment or other, and so we do not have categorise them in the way that you describe. We also do not have the information you have asked for about the number of reports that resulted in resignation or ongoing police enquiries. This is because we have no way of knowing whether a resignation directly resulted from a report being made or not. Similarly, the status of any police enquiry is a matter for Police Scotland, not the Scottish Government.

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

While our aim is to provide information wherever possible, in this instance we are

unable to provide some of the information you have requested because an exemption under 38(1)(b) personal information of FOISA applies to that information.

The reason why that exemption applies is explained in the Annex to this letter.

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
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



Rachel McGregor

Annex

An exemption applies

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested (number of reports that has resulted in dismissals) because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

From: [REDACTED]
Sent: 15 January 2019 19:30
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: RE: Fol/18/02676 - Review Response

Rachel,

[REDACTED]

Given the concerns expressed by colleagues, I think that we have to revisit the option of applying section 38(1)(b).

In order to do so, there has to be a **realistic prospect of identification** should we disclose the information. [REDACTED] says below "In terms of causal links whilst this information alone might not identify someone, when taken with information sources of information, for example other FOIs, it may raise the risk of identification." (my emphasis) There has to be a realistic causal link – a potential link will not, of itself, suffice. So we would need to be able to point to something more concrete than the possibility that the risk is raised.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] | Head of Policy | Freedom of Information Unit

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Sent: 15 January 2019 16:38
To: [REDACTED]
Subject: FW: Fol/18/02676 - Review Response

[REDACTED]

There does seem to be a concern from colleagues that someone may be identified. (See email trail).

Thanks
Rachel

Rachel McGregor |HR Business Partner| DG Education, Communities and Justice|Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: Bruce MG (Maureen) <Maureen.Bruce@gov.scot>
Sent: 15 January 2019 12:24
To: Richards N (Nicola) <Nicola.Richards@gov.scot>; [REDACTED]; McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: RE: FoI/18/02676 - Review Response

Thinking through to the response does that mean that instead of saying that we are not providing the information because there are less than 5, we should take the response up a level and say we have reached this decision because we have reviewed the evidence and made a judgement that there is real risk of individuals being identified?

I think [REDACTED] is trying to help us to set the response tightly against the provisions of the Act.

Maureen

From: Richards N (Nicola) <Nicola.Richards@gov.scot>
Sent: 14 January 2019 18:51
To: [REDACTED]; McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]; Bruce MG (Maureen) <Maureen.Bruce@gov.scot>
Subject: RE: FoI/18/02676 - Review Response

Thanks [REDACTED]

I would agree with your amendments and think that this should be our response. I conclude that given the intensity of media interest there is a risk of disclosure – and a narrowing down which could put yet more distress on individuals.

Cheers
Nicky

From: [REDACTED]
Sent: 14 January 2019 18:47
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>
Cc: [REDACTED]; Bruce MG (Maureen) <Maureen.Bruce@gov.scot>
Subject: RE: FoI/18/02676 - Review Response

Hi Rachel

I was working on a slight tweak to your response when this came in – see attached. This is just to make the distinction that these are formal cases and we don't record informal approaches to HR.

[REDACTED]

[REDACTED]

From: McGregor R (Rachel)
Sent: 14 January 2019 18:32
To: Richards N (Nicola)
Cc: [REDACTED] Bruce MG (Maureen)
Subject: FW: FoI/18/02676 - Review Response

Hi Nicky

To see the response from the FOI unit to your less than 5 suggestion.

Thanks
Rachel

Rachel McGregor |**HR Business Partner**| DG Education, Communities and Justice|Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: [REDACTED] >
Sent: 14 January 2019 15:12
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Subject: RE: FoI/18/02676 - Review Response

Rachel,

As discussed, we can't take a blanket approach. We either answer the question asked, or we have to apply an exemption (in this case, we're looking at section 38(1)(b) (personal information). In order for us to apply that exemption, we will have to say why releasing the number in this case would give rise to the realistic prospect of an individual being identified as a result of releasing that information. As previously advised, while we can take into account information in the hands of third parties, there must be a realistic causal chain between the disclosure and identification.

[REDACTED]

Happy to discuss.

[REDACTED] | **Head of Policy | Freedom of Information Unit**

[REDACTED]

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Sent: 14 January 2019 14:53
To: [REDACTED] >
Subject: FW: FoI/18/02676 - Review Response

Hi [REDACTED]

See Nicky's email. Do you have any issues with this?

Thanks
Rachel

Rachel McGregor |HR Business Partner| DG Education, Communities and Justice|Scottish Government|1W.09A|St Andrew's House|Ext 44407| Blackberry: 07780492410

From: Richards N (Nicola) <Nicola.Richards@gov.scot>
Sent: 14 January 2019 10:03
To: Bruce MG (Maureen) <Maureen.Bruce@gov.scot>; McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: RE: Fol/18/02676 - Review Response

Hi there

Just to add on this – unless there's a strong reason not to I think we should amend to 'less than 5' which is our usual configuration when there are small numbers of cases. If we don't do that for [REDACTED] then we'll be in a position where we need to specify [REDACTED] which could lead to people being identified.

Can we keep Comms involved around the release – [REDACTED] would be able to advise on who needs to be aware.

I think that's fine in terms of clearance.

Cheers
Nicky

From: Richards N (Nicola)
Sent: 11 January 2019 15:44
To: Bruce MG (Maureen) <Maureen.Bruce@gov.scot>; McGregor R (Rachel) <Rachel.McGregor@gov.scot>
Cc: [REDACTED]
Subject: RE: Fol/18/02676 - Review Response

Thanks for that

Separately could someone let me know what the [REDACTED] are?

I'll come back to you about further clearance.

Cheers
Nicky

From: Bruce MG (Maureen) <Maureen.Bruce@gov.scot>
Sent: 11 January 2019 08:36
To: McGregor R (Rachel) <Rachel.McGregor@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>
Cc: [REDACTED]
Subject: RE: Fol/18/02676 - Review Response

Hi Rachel

Thanks for persevering with this. I have looked at it and made one small edit to tidy up the text and also highlighted a bit of text that doesn't seem quite right ("at Scottish Government...")

Other than that I am happy with this.
Maureen

From: McGregor R (Rachel) <Rachel.McGregor@gov.scot>

Sent: 10 January 2019 20:30

To: Richards N (Nicola) <Nicola.Richards@gov.scot>

Cc: <[REDACTED]>; Bruce MG (Maureen) <Maureen.Bruce@gov.scot>; <[REDACTED]>

Subject: Fol/18/02676 - Review Response

Hi Nicky

Attached is the completed review response for FOI Fol/18/02676. It has been cleared by the FOI unit. Are you content to clear it? Does it need to be cleared by anyone else.

Thanks
Rachel

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