

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies

An exemption under section(s) s.38(1)(b) personal information of FOISA applies to some of the information you have requested.

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.

An exemption under section 25 information already accessible applies to some of the information you have requested. This is specifically related to the final response letters that you received from your initial FOI request (and annex) and the review of your FOI. I will not be releasing this information again as it is already accessible to you.

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.

An exemption applies, subject to the public interest test

Exemptions under section s.30(b)(i) and s.30(b)(ii) of FOISA applies to some of the information you have requested. This exemption refers to free and frank provision of advice between Scottish Government officials, Ministers and third parties for the purposes of advice and deliberations.

These exemptions are subject to the public interest test. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is some public interest in release as part of an open and transparent Government. However, this is outweighed by the public interest in ensuring that there is adequate space within Government to provide advice and views.

Under FOISA we are only required to provide relevant information, please find the extracts of the correspondence you requested below:

Extract 1:

From: [redacted]@gov.scot
Sent: 22 January 2020 12:16
To: McCallum R (Richard) [Redacted]@gov.scot
Subject: FW: FOI: Bold Revolutions

For info – request for FOI review on Bold communications

From: [redacted]@gov.scot
Sent: 22 January 2020 11:59
To: [redacted]@gov.scot
Subject: FW: FOI: Bold Revolutions

From: Henry Anderson <henry@healthandcare.scot>
Sent: 22 January 2020 11:55
To: Wright M (Malcolm) <Malcolm.Wright@gov.scot>
Cc: [Redacted] [Redacted] gov.scot>
Subject: RE: FOI: Bold Revolutions

Dear Sir/Madam,

Many thanks for your response to my freedom of information request on the 13th January, reference 201900009513. I am requesting an internal review of the response as set out in the Freedom of Information (Scotland) Act 2002 (FOISA).

I note the Scottish Government has judged that almost all of the information has been withheld under various exemptions which are not outweighed by the public interest test. However I would argue the exemptions have been too widely applied and the public interest has not been considered fully for the reasons set out below:

Sections 30(b)(i) and s.30(b)(ii) – free and frank provision of advice
The Scottish Information Commissioner's guidance states:

'There must be at least a significant probability that substantial inhibition would occur in order for the exemption to be appropriately applied. There must be a genuine link between disclosure and inhibition: it cannot simply be a remote or hypothetical possibility.'

It is not clear from the response letter this link exists. Nor is it clear that the inhibition to government business would be 'real and demonstrable' as the Information Commissioner states.

The Commissioner also states when advice or views are communicated as 'part of an individual's day-to-day professional functions...then the risk of substantial inhibitions may well be diminished'. My reading of the information provided suggests these are internal emails in the Scottish Government health team.

Despite the Commissioner stating the exemptions in section 30(b) should not be treated as "class exemptions" they appear to have been applied across much of the information I requested. The Commissioner states a 'blanket exemption on all internal communications' cannot be justified.

Sections 33(1)b – commercial interests

The Scottish Information Commissioner's guidance states: "The authority must ensure that it sets out whose commercial interests are likely to be prejudiced, as well as the particular nature of those interests", which has not been done in the response letter.

I also struggle to see how there is a "significant probability" that substantial prejudice would occur. I note that all Scottish public bodies are required to publish reports on their spend over £25,000 each month, which means the costs of any contract are already in the public domain.

I also note the Information Commissioner states "it won't usually be appropriate to withhold contracts in their entirety...only information which falls within the scope of an exemption withheld. It will usually be appropriate for contracts to be disclosed with exempt information "redacted" (blanked out), rather than for them to be withheld in their entirety."

Although it is difficult to tell what information has been withheld I believe this should also be considered.

Moreover, the Scottish Information Commissioner ruled in 2007 that details of the NHS Lothian PFI contract with Consort Healthcare relating to the Edinburgh Royal Infirmary were not confidential under FOISA, suggesting the blanket use of this exemption to any information relating to Bold Revolutions could be mistaken.

Public interest

I would also argue the public interest case in both of the above exemptions has not been appropriately considered.

The Scottish Government states: “There is a greater public interest in protecting the commercial interests of companies which enter into contracts with Scottish Government and relevant parties, to ensure that we are always able to obtain the best value for public money.”

However this is only a general argument that, if applied to all information, would see no details of government contracts with private contractors released.

I do not believe this satisfies the Commissioner’s point that there is “an in-built presumption in FOISA that it is in the public interest to disclose information unless a public authority can show why there is a greater public interest in withholding the information.”

Additional factors that have not been considered could include the fact this relates to spending of public money by the NHS on a private firm and the fact there was no public tender process in either contract award.

Section(s) s.38(1)(b)

Large amounts of information have been entirely redacted under the exemption relating to personal information. I note that the Scottish Information Commissioner states redactions relating to staff details should be kept “to the minimum necessary to remove the risk of identification”.

Please don’t hesitate to get in touch if I can help clarifying any of the above.

Kind regards,

Henry Anderson

Henry Anderson
Editorial team

07913002658
www.healthandcare.scot
@hacscot

Sign up for our regular bulletins and get key health and social care updates straight to your inbox.

From:[Redacted] @gov.scot [Redacted] @gov.scot>
Sent: 13 January 2020 16:16
To: Henry Anderson <henry@healthandcare.scot>
Subject: FOI: Bold Revolutions

Good afternoon,

Please find attached FOI Response to your email request on 11 December 2019, along with relevant attachments.

Kind regards,

[Redacted]

[Redacted]
Directorate of Health Finance
Scottish Government | Floor BR | St Andrew's House | Regent Road | Edinburgh EH1 3DG
Email: [Redacted] @gov.scot
[Redacted]
Ext: [Redacted]

*

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Extract 2:

From: [Redacted]@gov.scot
Sent: 12 December 2019 10:14
To: Freedom of Information; [Redacted]@gov.scot
Cc: [Redacted]@gov.scot
Subject: RE: FOI - HSC - TRIAGE - Bold Revolutions - MiCase 9513

[Redacted]

Thank for this. The case will be managed by [redacted] in this Directorate.

Regards,

[Redacted]

[Redacted]

Exemption 30 (b)(i)

From: Henry Anderson <henry@healthandcare.scot>
Sent: 11 December 2019 16:17
To: Central Enquiry Unit <CEU@gov.scot>
Subject: FOI: Bold Revolutions

Good afternoon,

I'd like to make a request under the Freedom of Information (Scotland) Act 2002.

Please could you provide me with any written information held by the Scottish Government relating to the company Bold Revolutions. This would include but not be limited to correspondence, emails and notes, including with health boards.

If you have any questions or requests for clarification you'd like to discuss by phone please do get in touch – my number is 07913002658. Thank you in advance.

If this request is likely to go over the number of working hours allowed under FOISA please would it be possible to let me know before the 20 day working period has elapsed so I can tailor the request? Thank you.

Kind regards,

Henry

Henry Anderson
Editorial team

07913002658
www.healthandcare.scot
@hacscot

Sign up for our regular bulletins and get key health and social care updates straight to your inbox.

Extract 3:

Section 30(b)(i)

Extract 4:

From: [Redacted]
Sent: 12 December 2019 11:17
To: [Redacted]@gov.scot>; McCallum R (Richard) <[redacted]@gov.scot>;
[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>;
[Redacted]@gov.scot>; McLaughlin C (Christine)
[Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; Connaghan
J (John) (Health) [Redacted]@gov.scot>
Cc: [Redacted]@gov.scot[Redacted]@gov.scot>
Subject: FW: FOI - HSC - TRIAGE - Bold Revolutions - MiCase 9513

This message has been archived.
Hi all,

Please see below FOI.

I am looking for written information (correspondence, emails and notes, with NHS health boards) you may have relating to the company Bold Revolutions.

I would be grateful if you could please send this on to anyone who you think may hold the relevant information.

[Redacted]

Extract 5

Exemption 30(b)(ii)

Extract 6:

Exemption 30 (b)(i)

Extract 7:

Exemption 30(b)(i)

Extract 8:

Exemption 30(b)(i)