

ANNEX A

From: [Redacted] <[Redacted] @gov.scot>
Sent: 11 December 2020 08:30
To: [Redacted] <[Redacted]@cosla.gov.uk>; Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>
Subject: RE: Temporary Closure Grant FOI

Hi [Redacted]

Any further info from that call that you could share?

Also, separately could you make an agenda point for today's meeting to discuss the monitoring we are setting up. I really want agreement in principle and the documents shared with LAs so they can start setting this up next week.

Thanks,
[Redacted]

From: [Redacted] <[Redacted] @cosla.gov.uk>
Sent: 10 December 2020 16:03
To: [Redacted] <[Redacted] @gov.scot>; Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>
Subject: RE: Temporary Closure Grant FOI

Haven't heard from all, but I expect it will have gone to all. About to go on a call with the SLAED network and will have a better idea after that.

[Redacted]

From: [Redacted] @gov.scot <[Redacted] @gov.scot>
Sent: 10 December 2020 15:57
To: [Redacted] <[Redacted] @cosla.gov.uk>; Joe.Brown@gov.scot; [Redacted] @gov.scot; [Redacted] @gov.scot
Subject: RE: Temporary Closure Grant FOI

Hi [Redacted]

It seems like the initial advice I received was wrong on this. The exemption only applies if publication is planned at the time of FOI submission. Can I ask which LAs were FOId? Was it all of them?

Thanks,
[Redacted]

From: [Redacted]
Sent: 10 December 2020 14:12
To: [Redacted] <[Redacted] @cosla.gov.uk>; Brown J (Joe)

<Joe.Brown@gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted]
<[Redacted] @gov.scot>
Subject: RE: Temporary Closure Grant FOI

Currently in the process of pulling together a formal line on this with the help of the FOI unit. But it seems that you can use the exemption under future publication once we announce – which we will do on Monday.

As you have 20 days to respond, I think you can wait till next week and point to the announcement. I will come back with confirmation on this.

[Redacted]

From: [Redacted] <[Redacted] @cosla.gov.uk>
Sent: 10 December 2020 13:11
To: Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>
Subject: FW: Temporary Closure Grant FOI

Details of the temporary closure grant FOI which LAs have received below.

Grateful for any guidance you can provide.

[Redacted]

From: [Redacted] <[Redacted] @parliament.scot>
Sent: 09 December 2020 15:45
Subject: FOI: Temporary Closure Grant

Good afternoon,

I would like access to the following information based on Freedom of Information legislation:

1. A detailed breakdown of all applications received to the Strategic Framework Business Fund's **Temporary Closure Grant** in each week since the fund went live. I would like details of:
 - a. the number of applications received,
 - b. the number of applications that have been approved,
 - c. the number of applications that have still to be processed,
 - d. the total value of grants that have been paid out in each week since the fund went live.

2. How much has the council received from the Scottish Government to date to pay for this fund?

I would appreciate if the above data could be sent over in an excel spreadsheet.

I look forward to hearing from you.

From: [Redacted] <[Redacted] @gov.scot>
Sent: 11 December 2020 16:05
To: [Redacted] <[Redacted] @cosla.gov.uk>; [Redacted] <[Redacted] @gov.scot>
Cc: Brown J (Joe) <Joe.Brown@gov.scot>
Subject: RE: Strategic Framework_Contingency Funds Issues Log_11 Dec 2020

[Redacted]

ISSUES LOG ATTACHMENT – ATTACHED SEPARATELY

[Redacted]

[Redacted]
COVID-Business Support Briefing and Operations
Scottish Government

Tel: 0300 24[Redacted] (Blackberry – [Redacted])

From: [Redacted] <[Redacted] @cosla.gov.uk>
Sent: 11 December 2020 15:58
To: [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>
Cc: Brown J (Joe) <Joe.Brown@gov.scot>
Subject: RE: Strategic Framework_Contingency Funds Issues Log_11 Dec 2020

[Redacted]

Cheers,

[Redacted]

From: [Redacted] @gov.scot <[Redacted] @gov.scot>
Sent: 11 December 2020 15:15
To: [Redacted] @gov.scot; [Redacted] <[Redacted] @cosla.gov.uk>
Cc: Joe.Brown@gov.scot
Subject: RE: Strategic Framework_Contingency Funds Issues Log_11 Dec 2020

[Redacted]

Some of our editing was still showing in the log Jamie sent earlier, so I attach a clean copy (although worth noting too the colour coding is now random!).

Thanks

[Redacted]

[Redacted]
COVID-Business Support Briefing and Operations
Scottish Government

Tel: 0300 24[Redacted] (Blackberry – [Redacted])

From: [Redacted] <[Redacted]@gov.scot>
Sent: 11 December 2020 14:16
To: [Redacted] <[Redacted]@cosla.gov.uk>
Cc: [Redacted] <[Redacted]@gov.scot>; Brown J (Joe) <Joe.Brown@gov.scot>
Subject: Strategic Framework_Contingency Funds Issues Log_11 Dec 2020

Hi [Redacted]

[Redacted]

Cheers

[Redacted]

Our Business Address is : COSLA, Verity House, 19 Haymarket Yards, Edinburgh,
EH12 5BH. t: +441314749200 w: <http://www.cosla.gov.uk>

ANNEX C

From: [Redacted] <[Redacted] @gov.scot>
Sent: 21 July 2020 10:43
To: [Redacted] <[Redacted] @midlothian.gov.uk>; [Redacted] <[Redacted] @gov.scot>
Cc: [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>; [Redacted] <[Redacted] @gov.scot>
Subject: RE: Question for you

Hello [Redacted],

Our suggestion of withholding information on individual payments made under the small business and retail, hospitality and leisure grant schemes (it is set out in the weekly issues log we circulate through COSLA Directors of Finance and the IRRV) reflected that highlighting which properties had received a grant also had the effect of showing which potentially eligible properties had not received the grant, thereby creating a potential fraud risk.

Now the business grants schemes are closed to new applications, that fraud risk no longer is a factor and potentially not a valid reason for withholding this information if requested. That said, how easy or practical it might be to release individual award information probably varies across all authorities, and it might be worth seeing if we can identify a common approach that 32 councils would be able to adopt. To that end, I will raise the issue with the business grants working group and COSLA and the IRRV. However, I guess that does not necessarily help you in working out how to respond to this current request!

The Scottish Govt also has a number of similar FOI requests.....I have appended below an example of our current answers. The text I have highlighted in red might be useful to you, and also reflects that some of my colleagues are in conversation with a number of authorities to explore how we might access and transfer individual payment data for analysis and also, potentially, publication.

Meantime, I am not sure I have been terribly helpful to you! However, I will let you know about where conversations with colleagues in other authorities and COSLA and the IRRV go.

Best regards,

[Redacted]
Local Government Division
The Scottish Government
0131 24[Redacted]

The Scottish Government does not currently hold information on the details of grants made to individual companies or sectors under the Coronavirus (COVID-19) Business Support Fund 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.

The business support fund was administered by local authorities on behalf of the Scottish Government. Information on the total number of applications received and grants awarded by each local authority is published at: <http://www.gov.scot/publications/coronavirus-covid-19-business-support-fund-grant-statistics/>. **The Scottish Government is working closely with local authorities to understand what further scheme data can be supplied and will look to make information public where possible and appropriate in due course.**

From: [Redacted] <[Redacted]@midlothian.gov.uk>
Sent: 21 July 2020 08:56
To: [Redacted] <[Redacted]@gov.scot>
Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Subject: RE: Question for you

Thanks [Redacted], appreciated.

[Redacted] | Place Directorate | Midlothian Council | T. [Redacted] E. [Redacted]@midlothian.gov.uk

From: [Redacted]@gov.scot <[Redacted]@gov.scot>
Sent: 21 July 2020 07:28
To: [Redacted] <[Redacted]@midlothian.gov.uk>
Cc: [Redacted]@gov.scot; [Redacted]@gov.scot; [Redacted]@gov.scot; [Redacted]@gov.scot
Subject: RE: Question for you

Hi [Redacted],

Thanks for your email.

I have now moved back to my day job and don't actively cover the NSEHF and B&BHF but have copied in folks here who I think can help.

I will leave it to these folks to respond to your question regarding the lines re FOI requests.

Thanks

[Redacted]

[Redacted] **Trade Support Team | Directorate for International Trade & Investment | Scottish Government**

5 Atlantic Quay | 150 Broomielaw | Glasgow | G2 8LU

Tel: 0131 24[Redacted] ext: [Redacted] Mobile: +44[Redacted]

[Redacted]@gov.scot

Find us on Twitter @DITScotland



From: [Redacted] <[Redacted]@midlothian.gov.uk>

Sent: 20 July 2020 15:51

To: [Redacted] <[Redacted]@gov.scot>

Subject: Question for you

Afternoon [Redacted],

Hope this finds you and yours keeping well and safe.

We are receiving volume FOI requests relating to mainly the Business Support Grants and have been advised by the NDR team in Edinburgh that due to the high volume of fraudulent applications SG have instructed 'no response' for these.

Is there a statement from Scottish Government to that effect that we could respond with?

Also do you know if the same stance is being applied to the NSEHF & B&B Grant schemes too?

Any guidance you can offer would be appreciated.

Thanks

[Redacted]

[Redacted] | [Redacted] | [Place Directorate | Midlothian Council | T. \[Redacted\]](#)

[E. \[Redacted\]@midlothian.gov.uk](mailto:[Redacted]@midlothian.gov.uk)

W: [Midlothian Business Gateway Facebook Page](#)

W: [Business Gateway Midlothian Twitter](#)

W: [Business Gateway Midlothian LinkedIn Page](#)

W: [Business Gateway Workshops and Events](#)

W: [Locate in Midlothian Website](#)

W: [Supplier Development Programme Events and Training](#)

[Midlothian Council | Fairfield House | 8 Lothian Road | Dalkeith | EH22 3AA](#)

See info on Coronavirus Business Grants here:

<https://www.midlothian.gov.uk/coronavirus-business>

How to claim for wages through the Coronavirus Job Retention Scheme

ANNEX D

From: Brown J (Joe) <Joe.Brown@gov.scot>
Sent: 11 December 2020 07:10
To: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Gillespie G (Gary) <Gary.Gillespie@gov.scot>; OCEA COVID-19 Analysis Hub <OCEACOVID-19AnalysisHub@gov.scot>; Economy Covid-19 Hub <BESTCovidHub@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Subject: RE: Enquiry - information on covid business grant awards

[Redacted]

I don't think quarterly publication will be endorsed. Monthly is I suspect the best approach

JOE BROWN

Strategic Engagement and Co-ordination Unit
Directorate for Economic Development
Scottish Government
3rd Floor, 5 Atlantic Quay
Glasgow, G2 8LU
T - 0131-244-1144
M - 07795-222390

www.scottishbusinesspledge.scot



From: [Redacted] <[Redacted]@gov.scot>
Sent: 10 December 2020 18:13
To: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Brown J (Joe) <Joe.Brown@gov.scot>
Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Gillespie G (Gary) <Gary.Gillespie@gov.scot>; OCEA COVID-19 Analysis Hub <OCEACOVID-

19AnalysisHub@gov.scot>; Economy Covid-19 Hub <BESTCovidHub@gov.scot>
Subject: RE: Enquiry - information on covid business grant awards

[Redacted]

Thanks for the confirmation on my view.

Subject to Ministerial views we will take this forward as we were going to do but move more quickly.

We already have agreement on publishing the circuit breaker information hopefully next week with much thanks to [Redacted] for that.

[Redacted]

From: [Redacted] <[Redacted]@gov.scot>

Sent: 10 December 2020 18:05

To: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

Freedom of Information <foi@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

[Redacted] <[Redacted]@gov.scot>; Brown J (Joe) <Joe.Brown@gov.scot>

Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

[Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Data

protection and information assets Mailbox <dpa@gov.scot>; [Redacted] <

[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Gillespie G (Gary)

<Gary.Gillespie@gov.scot>; OCEA COVID-19 Analysis Hub <OCEACOVID-

19AnalysisHub@gov.scot>; Economy Covid-19 Hub <BESTCovidHub@gov.scot>

Subject: RE: Enquiry - information on covid business grant awards

[Redacted]

All sounds good to me.

As you will all know, we are already publishing large volumes of information related to Covid to be as transparent as possible and the more we can do, the better it is from an FOI perspective, potentially saving us time and effort.

[Redacted]

From: [Redacted] <[Redacted]@gov.scot>

Sent: 10 December 2020 18:00

To: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

Freedom of Information <foi@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

[Redacted] <[Redacted]@gov.scot>; Brown J (Joe) <Joe.Brown@gov.scot>

Cc: [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

[Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Data

protection and information assets Mailbox <dpa@gov.scot>;

[Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; Gillespie G

(Gary) <Gary.Gillespie@gov.scot>; OCEA COVID-19 Analysis Hub <OCEACOVID-

19AnalysisHub@gov.scot>; Economy Covid-19 Hub <BESTCovidHub@gov.scot>

Subject: RE: Enquiry - information on covid business grant awards

[Redacted], Joe,

Many thanks for all the input on this. As discussed Joe I am strongly minded to put up a Ministerial submission tomorrow with a view to advising on publishing the data already provided to us by LAs, which is in an aggregate form, for schemes based on the Strategic Framework . This would be a publication as soon as possible.

We can then inform LAs that this will be done and it is then up to them as to whether their FOIs can be answered with reference to this data as per section 25 even though this is not strictly within the timeframe as to when the FOI was raised .

Note the information from LAs will necessarily be only a partial picture as businesses can apply retrospectively for these grants and processing of grant applications by LAs is obviously still an ongoing process. We will heavily caveat any data published as such and with an experimental statistics badge.

If we preannounce even a quarterly release of the data going forward now this will pre-empt any further FOI at least on the aggregate data. I actually expect we will be publishing monthly to allow Ministers to publically comment on this data .

We will need to work with LAs on a potential orderly release of the individual business level information (as has been done for the creative industries grant) and we have already had some discussion with LAS in sharing their data with SG at the individual business level rather than the aggregate level currently shared.

Welcome views.

[Redacted]

From[Redacted]< [Redacted]@gov.scot>

Sent: 10 December 2020 17:45

To: [Redacted]< [Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>;

[Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>

Cc: Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted] <[Redacted]@gov.scot>;

[Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>;

[Redacted] <[Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>

Subject: RE: Enquiry - information on covid business grant awards

Colleagues

I think I need to offer some slight clarifications on the points below.

[Redacted]

From: [Redacted]< [Redacted]@gov.scot>
Sent: 10 December 2020 17:22
To: [Redacted]< [Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Cc: Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>
Subject: RE: Enquiry - information on covid business grant awards
Importance: High

Hi [Redacted]

Just got of a call with you and thought I'd feedback key points for others benefit:

- We cannot respond on behalf of Local Authorities, or tell them what to do. We can provide guidance and support. **We may offer our views, having been consulted by the LAs, and that may constitute informal support, but we should not offer guidance to other public authorities. As noted below, Ministers have been accused of trying to interfere with other authorities' decisions and on one occasion this related to 'taking control' of a request made to all LAs.**
- While LAs cannot use our commitment to publish if we had not made that commitment at the time of the FOI, if we have in fact published the information they would be covered under section 25 as the information would already exist. **Strictly speaking, to apply s25, the information should be available when the request is received, so if their responses were taken to appeal, the Commission could find against them. However, if the requester is getting the information they have asked for, it is difficult to see why they would ask for a review, never mind going to appeal.**

As it seems all LAs have been FOId, we have a choice of either advising them they should release the data and let us know when they do (so we know what is in the public domain – assuming that an FOI counts as public domain) **yes - an FOI does count as being in the public domain.** Or we publish ourselves next week and suggest LAs wait for this then point to it as a reason for not releasing. **We definitely should not suggest to LAs that they delay their replies. That would draw severe criticism (and possibly more) from the Commissioner.**

My preference would be the latter I think, as we could release information in an orderly manner and there would be less concern about reconciling our later release with the figures that were released as part of an FOI (which could be complicated if they weren't from the same time period).

Happy to take Joe and others view on this though.

Thanks,
[Redacted]

[Redacted] | Statistician | COVID-19 Business Grant Support | Strategic Engagement and Coordination Unit | Economic Development Directorate

From: [Redacted]< [Redacted]@gov.scot>
Sent: 10 December 2020 15:36
To: [Redacted]< [Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>
Cc: Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted]<[Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>
Subject: RE: Enquiry - information on covid business grant awards

[Redacted]

I have added comments below against your questions.

Happy to discuss.

[Redacted]

From: [Redacted]< [Redacted]@gov.scot>
Sent: 10 December 2020 15:05
To: Freedom of Information <foi@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>
Cc: Brown J (Joe) <Joe.Brown@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>
Subject: RE: Enquiry - information on covid business grant awards

Hi [Redacted],

I'm currently working on statistical publications for this data, which confuses the picture somewhat. The other piece of information is that LAs have been FOId about aggregate data (see attached).

The publications are not currently approved, nor are they scheduled. However, I am hoping to get a submission in urgently with an agreement from ministers by tomorrow. That would allow us to announce on Monday. I should note the quick turnaround is not due the FOIs specifically, just the pace of the area in general.

I have a few questions:

- Would a publication announced on Monday allow a response to FOIs next week pointing to our future publication as a reason for an exemption? If you mean a response to FOIs received next week, then yes - as long as the publication date is within 12 weeks of the request being received. If you mean responding next week to existing requests, then no because the s27 exemption only applies if there is an existing commitment to publish within 12 weeks at the time the request is received.

- Does this apply, even though the LAs themselves are not publishing? If we are talking about the first option above then I consider it would. S27(1)(a) allows for publication to be planned by a Scottish public authority or any other person. If we have made that public, then I consider that could be cited.
- Would recipient data FOIs be covered by the publication of aggregated data, or would we have to be publishing the recipient level data ourselves? LAs could only use s27 (or s25 if it is already published) if the information they are asked for can be identified within the aggregated data. If that is not the case, then simply referring to the aggregated data would not provide the information requested.

Finally, are we sure that the publication of details of small business would not disclose protected details? In some cases the businesses names may be the same as the individuals. Could I get a view on this from data protection colleagues? Happy to take DP colleagues' view. However, I am firmly of the opinion that if an individual sets up a business in his/her name, then that is business information - it is presumably registered as such and is publicly available (I see lots of businesses with their owners' names on public display, so I see no way that they could suggest this is somehow only personal).

Thanks,
[Redacted]

[Redacted] | Statistician | COVID-19 Business Grant Support | Strategic Engagement and Coordination Unit | Economic Development Directorate



From: [Redacted]< [Redacted]@gov.scot> **On Behalf Of** Freedom of Information
Sent: 10 December 2020 14:21
To: [Redacted]< [Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>
Cc: [Redacted]< [Redacted]@gov.scot>
Subject: RE: Enquiry - information on covid business grant awards

[Redacted]

I am not aware of FOI Unit having offered any advice and we would certainly be cautious about advising any other public authority. As you note, it is for LAs to decide how they deal with requests and SG should ensure we do or say nothing that might be misrepresented as Ministers seeking to interfere with the decisions of other authorities (and we have been accused of that before).

I have to say, I would be rather sceptical about s35(1) applying to this information. It is not clear to me from what you say below (and that may simply reflect my lack of knowledge) how publishing details of businesses that have already received funds could support a fraudulent application when an award has been made.

It is not unusual for public authorities - including SG - to publish details of funding awards and a recent example related to Covid saw Creative Scotland publish details of the awards made under the Culture Venues Recovery Fund scheme at: <https://www.creativescotland.com/what-we-do/latest-news/archive/2020/11/funds-reach-culture-organisations>. This seems to me to include small businesses so presumably these too could be compared against NDR data, but I am not aware of any issues resulting from this.

I would also question whether information relating to a business grant, even for a small business, should be routinely classified as personal information. I recognise there may be some details that might be withheld (eg names of staff). However, the grant applications would be made in a business, not a personal, capacity, so it would seem counterintuitive to then claim that the information relating to those applications should be treated as personal, and of course, much of the of their business information must presumably be in the public domain already.

Happy to discuss.

[Redacted]

From: [Redacted] <[Redacted]@gov.scot>
Sent: 07 December 2020 12:41
To: Freedom of Information <foi@gov.scot>
Cc: [Redacted] <[Redacted]@gov.scot>
Subject: Enquiry - information on covid business grant awards

FOI Unit

I am involved in the covid business support grants, such as the Strategic Framework Business Fund and COVID Restrictions Fund, and would welcome your views on a matter which has come up in discussion with local authorities.

Local authorities are administering the schemes on behalf of Scottish Government, and have received Freedom of Information Requests asking for information which includes the name, address, registration number of organisations which have received covid-19 support. They have not released this information and that decision for at least one local authority is now subject to appeal.

When asked for a steer on this, both now and in relation to the previous schemes, we suggested that publishing information which identifies the business could be used to support a fraudulent application and that there is an exemption for this under section 35(1) of the FOI (Scotland) Act . By way of illustration, the schemes are linked to the non domestic rates (NDR) system so it would be possible to compare information about award recipients against information available on the Scottish Assessors website for NDR business premises

Another consideration could be that in the case of very small businesses publishing details might disclose personal information.

I am not sure if you have offered any advice on this previously, but with appeals now coming into LA would welcome any thoughts, although appreciate it is ultimately for Local authorities who hold the information . We in SG do not currently hold any information about individual awards for these schemes but if we started to collect that now, we could likewise be subject to such requests.

Thanks , and happy to discuss if easier.

[Redacted]

[Redacted]
COVID-Business Support Briefing and Operations
Scottish Government

Tel: 0300 24[Redacted] (Blackberry – [Redacted])

From: [Redacted]< [Redacted]@gov.scot>
Sent: 09 October 2020 09:11
To: [Redacted]< [Redacted]@gov.scot>
Cc: [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>;
[Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>;
[Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>
Subject: RE: Advice on Handling - Creative Scotland Vexatious Correspondent - 8
10

[Redacted],

My apologies that we have not come back to you sooner on this. FOI requests have to be treated differently to general correspondence. As you say, there is no concept of a “vexatious correspondent” in relation to FOISA, and while individual requests may indeed be vexatious it is a high bar and authorities are not expected to apply section 14(1) of FOISA (vexatious requests) lightly.

In terms of the Scottish Government approach to whether an FOI request is vexatious, we aim to align closely with the Commissioner’s guidance. We do however exercise considerable caution before applying section 14(1), and I am aware of cases where, despite the FOI Unit advising that the criteria for applying section 14(1) appeared to have been met, Ministers have gone on to decide that we should not apply it and that we should answer the request. I would estimate that the Unit sees in the low single figures of requests which might meet the criteria each year (and we receive over 3,000 requests a year).

As each request has to be assessed on its own merits, and as I am not aware of the circumstances of the FOI requests Creative Scotland have received, it’s difficult to offer any further comments. The volume of requests, by themselves, are unlikely to be vexatious (the Commissioner decisions on volume alone involve thousands of requests), but it may well be that taken with the other circumstances you describe, the requests have the effect of harassing the authority (or one of the other criteria set out in the Commissioner’s guidance). If it would be helpful, we would be happy to have a chat with Creative Scotland’s FOI lead, though as it is a separate Scottish public authority we’re always clear that this is on the basis of sharing expertise among FOI officers, and in no way represents advice from or the position of the Scottish Ministers.

In short, even if a correspondent is being dealt with under a vexatious or persistent correspondent/unacceptable actions policy, the authority still has to handle their FOI requests exactly as they would a request from anyone else. The authority may choose to apply section 14(1) to a request, but it has to consider any subsequent requests afresh, and determine whether they are vexatious on a case-by-case basis.

Happy to discuss.

[Redacted]

[Redacted] | **Head of Policy and Casework | Freedom of Information Unit**

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

From: [Redacted]< [Redacted]@gov.scot>
Sent: 18 August 2020 19:50
To: [Redacted]< [Redacted]@gov.scot>
Cc: [Redacted] [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]<[Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]<[Redacted]@gov.scot>; [Redacted]<[Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Subject: FOI - interacting with other Scottish public authorities - non-Ministerial officeholders

[Redacted],

Sorry I didn't get back to you yesterday on your query about the CMO (which I've copied below). My response has rather grown arms and legs as it has prompted me to visit various bits of half-written advice and merge them into a bigger note about a) how we interact with other authorities generally and b) how we interact with non-Ministerial officeholders (NMOs) like the CMO in particular.

It's probably much longer than you were hoping for, but I have tried to provide a direct answer at the end.

The general position

The general position is that every Scottish public authority listed in FOISA is separate to all of the others, and they cannot transfer requests among themselves. If we get a request for information that we do not hold, yet we know another Scottish public authority will hold it (say it about MSPs' staffing arrangements, where the Parliament will hold the information), then there are two possible approaches:

1. to respond to the FOI, applying section 17(1), and giving details of the other authority so that the requester can make a fresh request
2. to provide advice and assistance by telling the requester that they have made their request to the wrong authority, suggesting that they contact the correct authority, and inviting them to withdraw their request to the Scottish Government

Approach 1 is probably the technically "correct" solution, and if the requester is not prepared to withdraw the request to the Scottish Government then we will have to follow it anyway. However, approach 2 has the potential advantage of assisting the requester more quickly, and if we help them identify the correct authority then hopefully they would be content to withdraw.

Application to non-Ministerial officeholders

The picture is a little more complicated when we come to the NMOs in the Scottish Administration, who are listed in Part 2 of schedule 1 to FOISA. By definition, they are not covered by the Scottish Ministers' designation in Part 1 (which covers the Scottish Ministers (i.e. core Directorates) and their executive agencies). The NMOs

are part of the wider Scottish Administration. However, they are not one-size-fits-all entities so it's not straightforward to set out their relationship to the Ministers – in effect, the NMO covers a spectrum of possibilities. I've split them broadly into groups, though this by no means covers everyone in Part 2.

Group 1 – authorities with a clear separate identity

Some of the NMOs existed long before the Scottish Ministers or FOISA – like the Keeper of the Records/Registrar General, who is responsible for National Records of Scotland, or the Keeper of the Registers, who is responsible for Registers of Scotland. They have been separately listed in FOISA from the outset. Others are newer bodies, which were set up as separate entities and again have always been separately designated in FOISA, for example the Office of the Scottish Charity Regulator, Revenue Scotland, the Scottish Fiscal Commission, or the Scottish Housing Regulator. The Scottish Courts and Tribunals Service is slightly different, because its predecessor was an executive agency before becoming a separate body (and separately listed in FOISA) in 2010.

However, what all of those bodies have in common is a very clear separate identity from the Scottish Government. I don't think we tend to receive requests for those authorities, and if we did then in my view we would deal with such requests in the way outlined above (i.e. in the same way we would treat requests that were properly for any other separate Scottish public authority). They all tend to have their own established information governance teams, so we are almost never asked for advice by them – very occasionally we see discussions between those teams and the FOI Unit, but we do not advise them.

Group 2 – HM Inspectors/other regulators

The next group of NMOs is largely made up of HM Inspectors (Constabulary, Prisons, Fire and Rescue Services, Prisons etc). These tend to be very much smaller authorities who are staffed by SG civil servants on secondment/assignment rather than employing their own staff, and they also tend to use SG buildings, IT systems and so on (though there are some variations). This sometimes causes a little confusion about whether or not the FOI Unit provides advice to them, whether we can transfer requests to them and so on. However, one of the main distinguishing features of this group is that these officeholders are appointed as independent regulators, so again there tends to be little confusion in relation to them.

Again, I think we would tend to deal with requests properly for these authorities as set out above. When it comes to advice, we do see more queries coming from these authorities – largely because they are much smaller, and so do not have their own information governance function, and also because they tend to be more accustomed to accessing other SG services as set out above. Strictly speaking, the Unit does not advise these bodies, but in practice we are usually content to talk through any issues and give a steer about what we would do if the Ministers were faced with a similar situation. This should always be caveated to the extent that we are not giving them advice, and that they can always approach OSIC for assistance. My recollection is that OSIC is aware of this arrangement, and thinks it is an appropriate one.

Group 3 – NMOs with significant Scottish Government integration

Where the position becomes more difficult is in relation to NMOs who are much more closely integrated into the Scottish Government itself. In the current situation, the most high profile NMO in this situation is the CMO. However, historically questions have arisen around NMOs who are embedded within Education Scotland (HM inspectors of schools, and the Registrar of Independent Schools) and recently we have seen some queries about rent officers (who are badged as Rent Service Scotland, which is part of the Housing and Social Justice Directorate). In a similar vein, procurators fiscal and the Queen's and Lord Treasurer's Remembrancer are separate authorities within the Crown Office and Procurator Fiscal Service (which is not a separate authority but is treated by everyone including the Commissioner as if it were).

The practical reality is that there can be very little distinction between the work carried out by these NMOs and the associated area of the Scottish Government. Often, there is no real distinction in records management terms either, making it hard to identify what information is held in what capacity – this was a particular issue with Education Scotland in the past.

This means that the general approach set out above does not work as well as it does for other authorities. Instead, what we tend to find is that requests will be treated as NMO requests only if they are expressly addressed to the NMO, or very clearly concern them. Often, the requests come into CEU, are triaged and it is only at a much later date that we realise that strictly speaking it was a request to a NMO rather than to the Scottish Ministers. Recently we have seen an increase in requests to the CMO in particular, doubtless because of the higher profile of that officeholder during the current situation.

As with Group 2, we do tend to see more queries/requests for advice coming from these NMOs. In some cases, like the Registrar of Independent Schools, we have a fairly clear arrangement like the one mentioned for Group 2 – for example, I had a discussion with the Registrar about an appeal case last year, because they had never dealt with one before, and talked them through how we would deal with appeals. In other cases, like the CMO, there is no real difference between the advice we would offer to a Directorate in DG Health and Social Care and the advice we would offer to the CMO. The dividing line can often be completely blurred.

In short, the position is fairly complicated in Group 3. The closer the NMO is to the Scottish Government proper, the more likely it is that we will treat them as not being a separate authority, although of course they are. It is probably not very satisfactory, but it does reflect the complexity of the public sector landscape. To some extent, the Commissioner must be comfortable with that level of complexity, as he is content to treat two of our executive agencies – COPFS and SPS – as if they were separate authorities when they are patently not).

[Redacted] *questions*

In other words, what does this mean in practice for our dealings with the CMO? Unfortunately the answers are not particularly tidy, but I think in general the approach should be:

- if the CMO directly receives an FOI request, it is a request to the CMO and cannot be transferred to the Scottish Ministers.
 - If it is about something where the CMO does not have the requested information, then I would suggest following either of the approaches set out in the general position above (i.e. a s. 17 response is not the only way, if you think you can provide advice and assistance and have the request withdrawn and resubmitted to the correct authority).
- if the Ministers receive an FOI request and:
 - it is clear that it was meant for the CMO (e.g. we recently saw a request received by CEU which was clearly addressed to the CMO) then it should be passed to the CMO to be handled
 - this might seem to run counter to the general advice above, but it reflects the lack of clear separation between CMO and SG. You have to search quite hard to find a CMO-specific email address on our website and I think it probably asks too much of requesters to expect them to find the CMO's email address when otherwise everything directs them towards CEU. The CMO page on www.gov.scot doesn't mention FOIs at all.
 - it is health-related, but does not directly reference the CMO, it should not be allocated to the CMO
- In relation to contributions, the position is potentially even more complicated, and can probably only be resolved by working out who holds the information and on what basis.
 - I wonder if in practice there is in fact very little information that is clearly held only by the CMO, and if in practice information may effectively be held both by the Ministers and by the CMO.
 - I suspect there is no clear demarcation (compared to other NMOs who appear to either not use eRDM, or who may have separate areas on it which are not accessible by others outwith the NMO).

I appreciate this probably doesn't give as much clarity as anyone might like, but it largely reflects that the situation is a complex one. It's also not something we've had to explore in detail given the historically relatively low number of CMO requests, but clearly the current situation is shining a light on it.

I'm happy to discuss further – and if anyone does not agree with the above, please let me know!

Thanks,

[Redacted]

Undernote

Hey [Redacted], on the back of some obvious confusion (mines) regarding CMO being a separate authority for FOI(S)A, can you clarify a couple of things for me &

the team please? Conscious I'll be asked for a handover at some point when they bat me back to you but also, I need to know now for myself! I understand that if CMO receive a FOI directly (like those 2 the other day) we cannot reallocate to anyone in SG, got that now. My questions are

1. If that is the case then should FOIs received by SG but for CMO not be handled as a section 17 and reallocated rather than being sent to me for response? I'm not understanding why I can't pass to SG but SG can pass to me?

2. If someone is handling a SG FOI and asks me for contribution (say Health workforce are working on one), should I be refusing and advising them to redirect whatever question(s) to CMO directly for response? On the basis that any information I hold is not held by SG?

**[Redacted] | Head of Policy and Casework | Freedom of Information Unit
Scottish Government | 2W | St Andrew's House | Regent Road | Edinburgh | EH1
3DG**

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

From: [Redacted]< [Redacted]@gov.scot> **On Behalf Of** Freedom of Information
Sent: 29 September 2020 18:27
To:[Redacted]@oscr.org.uk; Freedom of Information <foi@gov.scot>
Subject: RE: short training 'event' to support new case-handlers

[Redacted],

My apologies that I've not come back to you sooner – an unusually busy week last week!

We could certainly chat through how our training and casehandling approach has developed over the past 2 years or so – we had some fairly major changes as a result of the Commissioner's intervention into our FOI practice and procedure (which is ongoing) and then things have been quite substantially disrupted by the coronavirus outbreak, which has meant further changes to the way we do things.

Would Friday suit you? I should be reasonably clear after 12, or alternatively early next week looks reasonable at the moment.

Thanks,

[Redacted]
[Redacted] | **Head of Policy and Casework | Freedom of Information Unit**

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

From: [Redacted]@oscr.org.uk <[Redacted]@oscr.org.uk>
Sent: 21 September 2020 13:32
To: Freedom of Information <foi@gov.scot>
Subject: RE: short training 'event' to support new case-handlers

Ahh, I see. So perhaps not really what we are looking for then.

However, it would be good to pick your brains on the level of FOI training you provide to colleagues across core SG. We've recently undergone a restructure and have moved from a dedicated team of 3 people (FOI was an add on to their job) to giving all staff responsibility for responding to their own FOIs and it would be good to get an understanding of how this happens within core SG. Would you have 30 mins later this week for a quick chat?

Thanks

[Redacted]

From: [Redacted]@gov.scot <[Redacted]@gov.scot> **On Behalf Of** foi@gov.scot
Sent: 18 September 2020 15:42
To: [Redacted]< [Redacted]@oscr.org.uk>
Cc: [Redacted]@gov.scot
Subject: RE: short training 'event' to support new case-handlers

[Redacted],

Thanks for your email. I'd be happy to have a chat with you at some point next week about our plans. As you will know, OSCR is a separate Scottish public authority for the purposes of FOISA and so you will have your own procedures in place for handling FOIs. The training we're looking at is aiming to give an introduction to Scottish Government procedures (e.g. how to deal with MiCase, the new decision-making processes set out in the Criteria for Decision-making and so on) rather than being a general introduction to FOI that might be suitable for other authorities, but happy to have a word about whether we have anything available that might be useful for you.

Thanks,

[Redacted]
[Redacted]] **Head of Policy and Casework | Freedom of Information Unit**

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

From: [Redacted]@oscr.org.uk <[Redacted]@oscr.org.uk>
Sent: 16 September 2020 10:26
To: Freedom of Information <foi@gov.scot>
Subject: short training 'event' to support new case-handlers

Morning. I work for OSCR, the Scottish Charity Regulator. We are a Non Ministerial Office of the Scottish Government, based in Dundee. I was reading your Saltire blog published on 15 September and I am very interested in finding out more about the short training event you have developed for new case handlers. Is it possible to pick someone's brains about this please?

Thanks

[Redacted]
[Redacted]] **Team Leader: Office and Records Management**

OSCR has reduced resources at the moment due to the COVID-19 pandemic.

More information is available here

Email: [Redacted]@**oscr.org.uk** |

Web: **www.oscr.org.uk** | 2nd Floor, Quadrant House, 9 Riverside Drive, Dundee,
DD1 4NY

My normal working hours: Monday-Friday 9am to 3.30pm

From[Redacted]< [Redacted]@gov.scot> **On Behalf Of** Freedom of Information
Sent: 12 August 2020 15:00
To: [Redacted]< [Redacted]@gov.scot>
Cc: [Redacted]@gov.scot>; Freedom of Information <foi@gov.scot>; [Redacted]< [Redacted]@gov.scot>; [Redacted]< [Redacted]@gov.scot>
Subject: RE: applications for rent adjudication

[Redacted],

It looks like this request was directed to the Rent Service Scotland rather than the Scottish Government. As we understand it, Rent Service Scotland is effectively a collective name for the rent officers (based on this). For FOI purposes, rent officers are separate Scottish public authorities to the Scottish Ministers. This occurs with a number of other non-Ministerial officeholders e.g. the Registrar of Independent Schools (who is a civil servant based in Education Scotland) and the Drinking Water Quality Regulator (a civil servant based in the Directorate for Energy and Climate Change).

Accordingly, the request should not be handled via the usual SG processes (including triage by the Unit, recording on MiCase and so on). Nor should it be sent to Ministers for clearance, though at first sight we would have assessed it as a routine case in any event, so it would not have gone to Ministers even if it had been an SG request. We can give some informal advice if that would be helpful, but ultimately the rent officers are subject to FOISA in their own right.

I appreciate this is a relatively unusual situation, so happy to have a word if that would be helpful (I have a call at 3, but free after that).

Many thanks,

[Redacted]

[Redacted] | **Head of Policy and Casework | Freedom of Information Unit**

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

From: [Redacted] <[Redacted]@gov.scot>
Sent: 12 August 2020 13:23
To: Freedom of Information <foi@gov.scot>
Cc: [Redacted]<[Redacted]@gov.scot>
Subject: FW: applications for rent adjudication
Importance: High

Good afternoon, please see FOI, can you enter onto the tracker please and advise of the reference number?

Many thanks

[Redacted]
[Redacted] | Rent Valuation Team Leader
t:014124[Redacted] | e: [Redacted]@gov.scot
mobile: [Redacted]

Scottish Government | Housing & Social Justice Directorate
5 Atlantic Quay, Glasgow, G2 8LU

ANNEX I

From: [Redacted]<[Redacted]@gov.scot>
Sent: 29 December 2020 17:25
To: [Redacted]< [Redacted]@gov.scot>
Subject: FW: Fol enquiry

Another email to add to the “other authorities” stuff...

[Redacted]] **Head of Policy and Casework | Freedom of Information Unit**

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, Microsoft Teams, or on my mobile.

From: [Redacted]< [Redacted]@educationscotland.gov.scot>
Sent: 02 December 2019 12:33
To: [Redacted]< [Redacted]@gov.scot>
Subject: RE: Fol enquiry

Many Thanks [Redacted], that’s very helpful.

The applicant did come back to us on the original response but they cantered their request for review (and subsequent appeal) on one particular document. The additional information is entirely separate from that specific document, so I don’t think a significant issue is likely to arise.

Thanks again,

[Redacted]

From: [Redacted]< [Redacted]@gov.scot>
Sent: 02 December 2019 12:31
To:[Redacted]< [Redacted]@educationscotland.gov.scot>
Subject: RE: Fol enquiry

[Redacted],

We don’t routinely send out further information after a formal response has been issued unless the applicant has expressed dissatisfaction with the response received (and so triggers a review). A chat with the team suggests that the reasoning is that further responses can lead to issues with e.g. the ability to ask for a review of any redactions in that new material, time limits for that review and so on. That said, we have occasionally sent out some supplementary information on a case by case basis.

Accordingly, we don’t have a template – a short letter of the sort you suggest sounds about right. I wouldn’t see any reason to inform the Commissioner.

Happy to discuss.

[Redacted]

[Redacted] | **Head of Policy and Casework | Freedom of Information Unit**

T: (0131) 24[Redacted] | M: [Redacted]

From: [Redacted]< [Redacted]@educationscotland.gov.scot>

Sent: 02 December 2019 12:02

To: [Redacted]< [Redacted]@gov.scot>

Subject: Fol enquiry

Hi [Redacted],

I wondered if you could assist? On Thursday I responded to a Subject Access Request which was all fairly standard; however, when searching for material in scope, a colleague discovered a small number of emails that should have been included in a previous Fol response.

There's nothing of significance in my view, strictly there is no new information, but the correspondence itself wasn't disclosed (it was in an inbox and hadn't been saved to eRDM). I'm looking to send out the material (with some s.38 redactions) this week along with a short covering letter apologising for the oversight and so on.

I wondered if your team had a template letter or any advice for such circumstances? Is it appropriate to inform OSIC?

Regards,

[Redacted]

[Redacted] | **Registrar of Independent Schools (interim)**

Tel: 0131 24[Redacted]

Mobile: [Redacted]

Address: Optima Building, Glasgow

