

**From:** [redacted]  
**Sent:** 04 March 2021 15:33  
**To:** [redacted]  
**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

[redacted],

Apologies for the delay in getting back to you. I think it's fairly marginal whether the comment in question is within scope, but if we proceed on the basis that on a generous reading it is, then you will need to apply section 36(1) (confidentiality of communications) to the first question, and section 17 (information not held) to the second. I've included the wording below – it derives from the sample reasoning in our archived guidance, which is [here](#). This just needs to be inserted into our standard response letter (see [here](#), or in the MiCase wizard). The wording on the section 17 aspect is reasonably general to try and limit any issues around disclosing the source of our legal advice (which we do not do).

Happy to discuss.

[redacted]

#### Undernote

While our aim is to provide information whenever possible, in this instance we are unable to provide the information you have requested in the first part of your request. An exemption under section 36(1) (confidentiality of communications) of FOISA applies to that information because it is legal advice and disclosure would breach legal professional privilege.

This exemption is 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 open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested in the second part of your request. The Scottish Government does not have the information you have asked for because the Scottish Government does not record the proportion of time spent by staff working on particular matters (there being no business need to do so), and so it is not possible to ascertain the costs incurred in undertaking specific pieces of work.

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

**[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.**

I do not work on Wednesdays at present – please contact [foi@gov.scot](mailto:foi@gov.scot) if you need assistance in my absence.

---

**From:** [redacted]@gov.scot>

**Sent:** 03 March 2021 14:56

**To:** [redacted]@gov.scot>

**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

Hi [redacted],

After sending this, SGLD got back to me saying they have identified one small thing which may come under the scope of the question – a comment at the top of page 7 in the attached document.

I am going to apply a s.36 exemption to this, and a s.17 exemption to the second question as it was internal advice from SGLD.

I have a record of the searches undertaken by SGLD so I will add that too.

If this is wrong, please let me know and thanks again for your help with this. 😊

Thanks,  
[redacted]

---

**From:** [redacted]@gov.scot>

**Sent:** 03 March 2021 09:47

**To:** [redacted]@gov.scot>

**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

[redacted]

Thanks – did [redacted] clarify for her team's interests?

If so, then it's a relatively straightforward answer, based on our standard template letter (all the templates are here, or accessible via the MiCase response wizard). The operative part is as follows:

“While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested. The Scottish Government does not have the information you have asked for because [insert reasons].

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

In terms of the reasons, I assume the answer to the first part is that we do not have it because no such advice has been obtained. If so, something like “...the Scottish Government has not obtained legal advice on the publication of Covid-19 vaccine supply data” would dispose of the first part. While we do not disclose the source or content of legal advice, we *do* generally disclose whether or not we have sought legal advice on a particular matter. By way of advice and assistance, we should probably add (as a new

line/para after the formal notice part) “While the Scottish Government does not hold any information about the costs of providing such legal advice (because no such advice has been obtained), we can advise that the cost is accordingly nil.” to ensure the second question is comprehensively dealt with.

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, Microsoft Teams, or on my mobile.**

**I do not work on Wednesdays at present – please contact [foi@gov.scot](mailto:foi@gov.scot) if you need assistance in my absence.**

---

**From:** [redacted]@gov.scot>

**Sent:** 02 March 2021 14:58

**To:** [redacted]@gov.scot>

**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

Hi [redacted],

[redacted] has confirmed that there was no legal advice sought which falls within the scope of this request, so this would be a s.17.

Are there any particular lines you use for s.17's on legal advice?

Thanks,  
[redacted]

---

**From:** [redacted]@gov.scot>

**Sent:** 02 March 2021 12:46

**To:** [redacted]@gov.scot>

**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

[redacted],

Unfortunately we need to establish clearly whether the legal advice exists or not. While any legal advice is likely to be exempt under section 36(1) if it exists, we cannot apply an exemption to information that we do not hold. Instead, we must give notice under section 17(1) of FOISA that we do not hold it. Accordingly, could you please go back to SGLD on this to try and firm up whether or not we hold any advice falling within scope of the request? The request is a fairly narrow one, so it may well be that the answer is that we do not hold the information – but we need to be clear. It would also be helpful if you could ask SGLD what searches they have carried out, so that you can record this on the searches template – if we do give a section 17 response and the requester is dissatisfied, the Commissioner will expect us to have evidence of the searches carried out.

Question 2 is conditional on question 1 – i.e. there can only be costs if there has been legal advice – so once we have established that, it will clarify how we respond: the options are broadly s. 17 (because there is no legal advice), s. 17 (because it is internal advice and we do not charge – this is where I will need to try and find you some wording) or disclose (if we happen to have paid for external legal advice – our general approach is to disclose this).

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, Microsoft Teams, or on my mobile.**

**I do not work on Wednesdays at present – please contact [foi@gov.scot](mailto:foi@gov.scot) if you need assistance in my absence.**

---

**From:** [redacted]@gov.scot>

**Sent:** 02 March 2021 11:02

**To:** [redacted]@gov.scot>

**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

Hi [redacted],

I apologise for being so late in getting back to you about this FOI:

*I am writing to you to request the following information:*

*1) Any legal advice provided to the Scottish Government by internal lawyers or external counsel on the publication of Covid-19 vaccine supply data including but not limited to future, previous, and ongoing supply and the nature of the supply chain.*

*2) The cost of the provision of legal advice on the above topic.*

I have contacted the legal team for health to see whether the Scottish Government actually sought legal advice on this issue – their comments are attached.

The legal team have said they expect the information they have given would be exempt under Section 36 of FOISA.

In light of this, would you be able to provide some lines I could use to answer this?

The deadline is Thursday so I would be really grateful if you could let me know before then. 😊

Many thanks,  
[redacted]

---

**From:** [redacted]  
**Sent:** 05 February 2021 11:31  
**To:** Freedom of Information ; covid-19 Policy  
**Subject:** RE: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

Colleagues,

The casehandler will wish to be aware of our guidance and general approach to dealing with requests for legal advice and related matters – see pp. 120 and 121 [here](#).

In relation to question 1, while the Scottish Government only discloses its legal advice in the most exceptional of circumstances, we still have to ascertain what legal advice we hold before we can apply an exemption. Accordingly, liaising with SGLD will be key to establishing what is held so that appropriate exemptions can be applied.

In relation to question 2, while we would normally disclose the cost of legal advice, if it has all been provided internally we are unlikely to hold any recorded information about costs. We should be able to assist with some wording that has been used before to explain why we do not hold (or need to hold) information of this sort.

Happy to discuss, once a casehandler is appointed.

[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, Microsoft Teams, or on my mobile.**

**I do not work on Wednesdays at present – please contact [foi@gov.scot](mailto:foi@gov.scot) if you need assistance in my absence.**

---

**From:** [redacted]@gov.scot> **On Behalf Of** Freedom of Information  
**Sent:** 05 February 2021 08:37  
**To:** covid-19 Policy <covid-19.policy@gov.scot>  
**Cc:** Freedom of Information <foi@gov.scot>; [redacted]@gov.scot>  
**Subject:** FW: FOI - ODO - TRIAGE - Legal advice on the publication of Covid-19 vaccine supply data - 202100151053

Hello all

Please see the FOI request and triage advice below for allocation and processing. If this request cannot be handled in your area we would hugely appreciate any advice and assistance you can offer in finding the appropriate area for it.

It would be most helpful if the case handler could inform the FOI Unit when they have accepted the case.

The information request below has been assessed by the FOI Unit in line with Criteria for Decision-making agreed with the Scottish Information Commissioner.

We consider this is a valid request for information and should be treated as a request under FOISA.

**Please “Self Assign” the above case (202100151053) through Case Actions on MiCase remembering to send the requester a FOI/EIR specific acknowledgement. The response should be issued as promptly as possible and no later than 4/3/21.**

For detailed information regarding possible exemptions I would recommend the Scottish Information Commissioner’s website.

We have a duty to advise and assist requesters throughout this process and remember there is always a presumption in favour of disclosure.

You will see a link on MiCase to FOI Compliance documents. From there please save a copy of the Statement of Compliance completing it as your case progresses and saving it to the casefile when complete.

As the requestor has asked for details of legal advice, application of an exemption/exception under s36(1) *may* be considered. Please consult SGLD who are the experts regarding whether information can be considered legal advice or not. This exemption/exception is subject to the public interest test.

If we do not hold any information then it is preferable to issue that response as promptly as possible in the form of a refusal notice under section 17(1) of FOISA. It may be helpful to include an explanation of why we do not hold the information to place our response in context. Additionally we need to evidence that adequate and proportionate searches have been carried out. These searches should be recorded on the FOI Searches template saved to the casefile.

In FOISA terms we would assess this case as **routine**. As such it should not require a Ministerial decision in terms of disclosure. Please ensure that decisions on disclosure are taken by officials of appropriate seniority (normally C Band or above). You may find our Submissions Templates useful.

If necessary please sight your Comms team if you consider that parallel media handling is required. This assessment of sensitivity can change once full searches have been completed. *If this case becomes more sensitive and you consider that it requires a Ministerial decision and it is to be sent to SpAds prior to that, then please engage with the FOI Unit to help us reassess the case.*

To ensure we can advise on cases as promptly as possible at this time we would ask you to first contact the FOI Unit by email via e-mail at [foi@gov.scot](mailto:foi@gov.scot) if you have any questions.

New guidance to replace our SharePoint is being developed on Saltire and will be available soon (will be available here: <http://saltire/my-workplace/it-and-information-management/freedom-of-information/Pages/Guidance-for-FOI-case-handlers.aspx>)

In the meantime new overview guidance is available on Saltire here: <http://saltire/my-workplace/it-and-information-management/freedom-of-information/Pages/Freedom-of-Information-requests.aspx>

Extensive guidance (including briefs on all exemptions/exceptions) is available on the Commissioners website here: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

We have also archived all our SharePoint guidance so if anyone has any queries please contact [foi@gov.scot](mailto:foi@gov.scot). As always we are available for any advice and support.

---

**From:** Central Enquiry Unit <[CEU@gov.scot](mailto:CEU@gov.scot)>

**Sent:** 04 February 2021 16:58

**To:** Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>

**Cc:** [redacted]@gov.scot>; [redacted]@gov.scot>

**Subject:** FOI - ODO - TRIAGE - Publication of Covid-19 Vaccine Supply Data - [redacted] MiCase

**From:** [redacted] <[redacted]>

**Sent:** 04 February 2021 16:37

**To:** Central Enquiry Unit <[CEU@gov.scot](mailto:CEU@gov.scot)>

**Subject:** FOI Request

Dear FOI Officer,

I am writing to you to request the following information.

1) Any legal advice provided to the Scottish Government by internal lawyers or external counsel on the publication of Covid-19 vaccine supply data including but not limited to future, previous, and ongoing supply and the nature of the supply chain.

2) The cost of the provision of legal advice on the above topic.

Best wishes,

[redacted]

--

Best wishes,

[redacted]

Politics Reporter

The Scotsman

Phone: [redacted]

Mobile: [redacted]

*Registered Office: 1 King Street, London EC2V 8AU*

*Opinions expressed in this email are those of the writer and not the company. E-mail traffic is monitored within JPIMedia Limited and messages may be viewed. This e-mail and any files with it are solely for the use of the addressee(s). If you are not the intended recipient, you have received this e-mail in error. Please delete it or return it to the sender or notify us by email at [postmaster@jpimedia.co.uk](mailto:postmaster@jpimedia.co.uk)*

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---

**From:** [redacted]  
**Sent:** 05 February 2021 13:52  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** North Lowther Energy Initiative Limited - WIN-170-2004 [S+W-LegalDiv.FID4354234]

**Attachments:**



Letter to DPEA  
260121\_Redacted.pdf

Hi [redacted],

Apologies for the delay in setting this EIR up. I have registered this on MiCase here: [MiCase - View Case 151549](#)

Standard triage advice below

Best wishes

[redacted]

FOI Unit

----

Dear case handler

The information request below has been assessed by the FOI Unit in line with [Criteria for Decision-making](#) agreed with the Scottish Information Commissioner. We consider this is a valid request for information and should be treated as such under EIR.

Under EIR we have a statutory obligation to respond promptly to all requests. Following the Scottish Information Commissioner's intervention into the Scottish Government's FOI/EIR Performance and practice, we have committed to meeting the Commissioner's target of responding to at least 95% of requests within the statutory deadline. It is therefore imperative that the response to this case should issue within the statutory deadline which is **23 February 2021**

**Actions**

Please now 'assign to self' through the 'Case Actions' tab on MiCase. [MiCase - View Case 151549](#)

Please complete all relevant paperwork as your case progresses, including the mandatory [Statement of Compliance](#). The Statement of Compliance list details of all items of information identified as being potentially within scope of the request and provide a summary of the decisions you have made as case handler. The [Searches Template](#) should also be used to record details of searches carried out.

### **Sensitivity**

We would initially assess this case as **routine**. As such it should not require a Ministerial decision in terms of disclosure. Please ensure that decisions on disclosure are taken by officials of appropriate seniority. You may find the Submissions templates here useful. <https://erdm.scotland.gov.uk:8443/documents/qA962816>. If necessary please sight your Comms team if you consider that parallel media handling is required. This assessment of sensitivity can change once full searches have been completed. If this case becomes more sensitive and you consider that it requires a Ministerial decision, and so it is to be sent to SpAds prior to that, then please engage with the FOI Unit to help us reassess the case.

### **Resources**

- ✚ An overview of the EIR Handling process is provided by our [Checklist Guidance](#) document. There is also high level [Saltire Guidance](#) regarding EIR requests and the role of this Unit
- ✚ A more detailed set of guidance documents, including letter templates and information about standard approaches is available here [Freedom of Information \(FOI\): SharePoint: 2020-2025](#)
- ✚ [SharePoint Collection](#) contains our previously available FOI/EIR SharePoint guidance
- ✚ Redacting guidance is here: <http://saltire/my-workplace/it-and-information-management/data-protection/Pages/redaction-of-information.aspx>
- ✚ The Scottish Information Commissioner's [Briefings and Guidance](#) for Scottish Public Authorities is a useful resource for any officer handling an FOI/EIR request. This includes detailed guidance on the various exemptions/exceptions which may apply under FOISA. We would strongly advise that you familiarise yourself with the relevant Briefing from the Commissioner before applying any of the exemptions available under the legislation
- ✚ There is also an introductory e-learning module on the SG learning portal: <https://scotgov.learningnexus.co.uk/login/index.php>

---

**From:** [redacted]

**Sent:** 03 February 2021 14:18

**To:** Freedom of Information

**Cc:** [redacted]

**Subject:** FW: North Lowther Energy Initiative Limited - WIN-170-2004 [S+W-LegalDiv.FID4354234]

Dear Sir

Please see the attached for your reference which is a request for information under EIR. I would be grateful if you can register on MiCase, and provide triage advice, and confirm to me when registered.

Many thanks

[redacted]

Planning and Environmental Appeals Division (DPEA)

Scottish Government, Ground Floor, Hadrian House, FALKIRK, FK1 1XR

T: 0131 244 8179 E: [redacted]@gov.scot W: [www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk)

[www.gov.scot/Topics/Planning/Appeals](http://www.gov.scot/Topics/Planning/Appeals)



OUR REF N1278.2/CWI  
YOUR REF  
26 January 2021

Planning and Environmental Appeals Division  
Scottish Government  
Ground Floor  
Hadrian House  
Callendar Business Park  
Callendar Road  
Falkirk FK1 1XR

Dear Sirs

**North Lowther Energy Initiative Limited**  
**Section 36 Application in relation to North Lowther Energy Initiative**  
**WIN-170-2004**

We refer to the above application and would confirm that we act on behalf of the Applicant, North Lowther Energy Initiative Limited. The matter proceeded to a Public Inquiry held at the end of 2019, with the decision being issued on 8 January 2021. The Applicant's Closing Submission were submitted to the Inquiry at the appropriate time on 16 December 2019 (hereinafter referred to as the Closing Submission).

It has been noted that the Report produced by the Reporter and submitted to the Scottish Ministers identifies that the Closing Submission of the North Lowther Energy Initiative Limited has not been published online. Could you please provide the reasons why the Closing Submission has not been published.

In addition to that request, we also make the following information requests. The following formal requests are made under the Environmental Information (Scotland) Regulations 2004 (EIR):

1. Please provide all correspondence, emails, telephone notes or other records of all communications between the Reporter appointed by the Scottish Ministers, J Alasdair Edwards and officials within the Directorate of Planning and Environmental Appeals relating to the publication of North Lowther Energy Initiative Limited Closing Submission on the DPEA website.
2. Please provide all correspondence, emails, telephone notes or other records of all communications between the Reporter appointed by the Scottish Ministers, J Alasdair Edwards and officials within the Directorate of Planning and Environmental Appeals discussing the content or relating to the Closing Submission submitted by North Lowther Energy Initiative Limited.
3. Please provide all correspondence, emails, telephone notes or other records of all communications between officials or employees within the Directorate of Planning and Environmental Appeals discussing the content of the Closing Submission or the publication of it on the DPEA website.

**5th Floor, 1 Exchange Crescent**  
**Conference Square**  
**Edinburgh EH3 8UL**  
**DX 551970 Edinburgh 53**  
**T +44 (0)131 228 9900**  
**F +44 (0)131 228 1222**

1 West Regent Street  
Glasgow  
G2 1RW  
DX GW409 Glasgow  
T +44 (0)141 566 9900  
F +44 (0)141 565 1222

Condor House  
10 St. Paul's Churchyard  
London EC4M 8AL  
DX 98945 Cheapside 2  
T +44 (0)20 7429 4900  
F +44 (0)20 7329 5939

Commercial House  
2 Rubislaw Terrace  
Aberdeen AB10 1XE  
DX AB103 Aberdeen 1  
T +44 (0)1224 621 166  
F +44 (0)1224 623 103

[shepwedd.com](http://shepwedd.com)

Shepherd and Wedderburn LLP is a limited liability partnership incorporated in Scotland with number SO300895. Registered office and principal place of business: 5th Floor, 1 Exchange Crescent, Conference Square, Edinburgh EH3 8UL. The term partner in relation to Shepherd and Wedderburn LLP is used to refer to a member of Shepherd and Wedderburn LLP. A list of the names of the members is available for inspection at the principal place of business. All correspondence signed by a named individual is signed for and on behalf of Shepherd and Wedderburn LLP. Details of the country or jurisdiction in which the firm's lawyers are professionally qualified are set out at [shepwedd.com/legal-notices](http://shepwedd.com/legal-notices). Shepherd and Wedderburn LLP is regulated by the Law Society of Scotland and is authorised and regulated by the Solicitors Regulation Authority (with number 447895).

N1278.2 71332988 1 CWI

4. Please provide all correspondence, emails, telephone notes or other records of all communications between any employee or official of Scottish Natural Heritage (now known as NatureScot) relating to the Closing Submission of the North Lowther Energy Initiative Limited to any official within the Directorate of Planning and Environmental Appeals which has not been published on the DPEA website.
5. Please provide all correspondence, emails, telephone notes or other records of all communications between officials or employees of the Directorate of Planning and Environmental Appeals and the Energy Consents Unit of the Scottish Government relating to the Closing Submission submitted by North Lowther Energy Initiative Limited including any correspondence which accompanied the report submitted by J Alasdair Edwards to the Scottish Ministers on 21 October 2020.
6. Please provide all correspondence, emails, telephone notes or other records of all communications between officials or employees of the Directorate of Planning and Environmental Appeals providing the officials of the Energy Consents Unit of the Scottish Government with a copy of the Closing Submission submitted on behalf of North Lowther Energy Initiative Limited.

We look forward to receiving first of all a response to the point which we raised regarding the publication and secondly, a copy of the requisite information requested in terms of this letter.

Yours faithfully

[Redacted signature]

[Redacted name]

For and on behalf of Shepherd and Wedderburn LLP

[Redacted email]@shepwedd.com

T 0131 473 5104