

**From:** [Margaret Keyse](#)  
**To:** [\[Redacted\]](#)  
**Cc:** [Jennifer Ross](#)  
**Subject:** RE: Requests for submissions  
**Date:** 12 February 2021 17:08:59  
**Attachments:** [image001.jpg](#)

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Dear [Redacted]

Thank you for your email. I was aware that the order had been varied, but hadn't yet seen a copy, so it was good of you to send a copy on.

Given the (very recent) change of circumstances, and the fact that the Lord Justice Clerk has not yet issued written reasons, I am happy to agree to a further extension in both cases [Redacted] until Friday 26 February.

Margaret

**Margaret Keyse**  
**Head of Enforcement**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Email: [mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)

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cid:image001.jpg@01D1B813.F6E95030



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**From:** [Redacted]@gov.scot>  
**Sent:** 12 February 2021 16:22  
**To:** Margaret Keyse <mkeyse@itspublicknowledge.info>  
**Cc:** Jennifer Ross <jross@itspublicknowledge.info>  
**Subject:** RE: Requests for submissions

Dear Margaret,

As you may have seen, a hearing took place before the Lord Justice Clerk yesterday which resulted in the orders imposed in *HM Advocate v Salmond* on 10 March 2020 being varied. [Redacted] but I also attach a copy of the order as varied in case this has not yet reached you. It has been reported that the Lord Justice Clerk is to issue written reasons for the variation early next week – the BBC article on this matter is available [here](#).

As I mentioned previously, the orders of 10 March 2020 are also relevant to the two applications mentioned below. In light of the variation, we think it would be desirable to reconsider the withheld information to ensure that our approach properly reflects the current extent of the orders, and we do not think we can do so fully until we have seen and considered the Lord Justice Clerk's written reasons. The extended deadline for submissions in these cases is, of course, today, and I accept that we have already had the benefit of extensions in these cases. However, given the change in circumstances we wonder whether the Commissioner might be prepared to allow a further extension in order that we can properly consider the

variation before making submissions.

I apologise for the inconvenience – if you would like to discuss, I am available on the number below.

Kind regards,

[Redacted]

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

[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.

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**From:** Margaret Keyse <[mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)>

**Sent:** 02 February 2021 14:34

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

**Cc:** Jennifer Ross <[jross@itspublicknowledge.info](mailto:jross@itspublicknowledge.info)>

**Subject:** Requests for submissions

Dear [Redacted]

Thanks for calling today. This is just to confirm that I've extended the deadline for providing submissions in the following two cases to Friday 12 February.

Margaret

APPLICANT	SIC REF	SG REF
[Redacted]	202000973	202000022790
[Redacted]	202001437	202000094934

**Margaret Keyse**  
**Head of Enforcement**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road  
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**From:** [Redacted]@gov.scot>

**Sent:** 28 May 2021 18:33

**To:** Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>

**Cc:** Minister for Parliamentary Business <MinisterPB@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; DG Corporate <dgcorporate@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Henderson G (Gavin) <Gavin.Henderson@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; Internal Communications <InternalCommunications@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; Rennie M (Michelle) <Michelle.Rennie@transport.gov.scot>; FOI SpAds PO <FOI.SpAdsPO@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

**Subject:** ROUTINE - FOI - 202000094934 - appeal - Decision 083/2021 - initial minute to the Deputy First Minister

PS/Deputy First Minister and Cabinet Secretary for Covid Recovery

Copy: PS/Minister for Parliamentary Business  
PS/Lord Advocate  
PS/Solicitor General  
and others as per copy list

I attach a short routine minute, for information, to make the Deputy First Minister aware that we have received a Decision from the Scottish Information Commissioner. I also attach a copy of the Decision.

The Decision concerns a request made by [Redacted] seeking information in connection with the Scottish Government's procedure for the handling of harassment complaints involving current or former ministers. Detailed consideration of the Decision is underway and further briefing will be provided once this is complete. There has been some media interest in the Decision – DFM cleared our proposed lines last night and *The Scotsman* ran an article on the Decision today. A copy of the article is in the Annex to the minute.

We would be happy to discuss – I can be contacted on [Redacted] this weekend, and [Redacted] is the FOI Unit point of contact from Tuesday.

Kind regards,

[Redacted]

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

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

[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 Fridays at present – please contact [foi@gov.scot](mailto:foi@gov.scot) if you need assistance in my absence.**

Deputy First Minister and Cabinet Secretary for Covid Recovery

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

202000094934 – [REDACTED]

**DECISION BY SCOTTISH INFORMATION COMMISSIONER (083/2021)**

**Purpose**

1. To make you aware that we have received a Decision by the Scottish Information Commissioner which relates to a request made by [Redacted] for information in connection with the Scottish Government's procedure for the handling of harassment complaints involving current or former ministers.

**Priority**

2. *Routine.* We are required to comply with the Decision by **12 July 2021**. Any appeal against the Decision, which can only be brought on a point of law, would need to be lodged at the Court of Session by **8 July 2021**.

**Background**

3. On 19 August 2020, [Redacted] asked the Scottish Government:

*“Since the introduction of the Handling Harassment Complaints procedure in the Scottish Government detailed here:*

*<https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>, please provide the below information.*

1) *The date, nature of allegation, and the name of the person alleged to have harassed someone for each complaint dealt with using this procedure.*

2) *The outcome of each complaint including any official report.*

2a) *If a meeting took place as part of the outcome of the investigation into the complaint, I request the date, time, location, attendance record, agenda, minutes and any handouts provided to attendees.*

3) *Whether the harassment procedure has been used since the judicial review in 2018 won by the former First Minister Alex Salmond?*

3a) *If not, why not?”*

4. On 17 September 2020, we provided a response to [Redacted] which answered questions 1, 3 and 3a. In relation to questions 2 and 2a, we advised [Redacted] that the requested information was exempt information under a variety of exemptions.

5. [Redacted] asked for a review in relation to questions 2 and 2a, as he considered that the exemptions had been wrongly applied. On 26 November 2020, we responded to the request for review and substituted a different decision in relation to these two questions:

instead of applying exemptions, we advised [Redacted] that we did not hold any information that would enable us to respond to these queries, in accordance with section 17 of FOISA.

6. The basis for this revised approach was that the complaints in question were the complaints made by Ms A and Ms B against Mr Salmond, in respect of which the Permanent Secretary reached decisions on 22 August 2018. Those decisions were subsequently reduced by the Court of Session on 8 January 2019, at the conclusion of the judicial review proceedings brought against the Scottish Ministers and the Permanent Secretary by Mr Salmond. We took the view that the reduction of the decisions meant that they had no legal effect, that the complaints returned to the position before the Permanent Secretary reached decisions on them, and that they could not therefore be said to have reached an outcome. This appeared to us to be consistent with the First Minister's statement to the Scottish Parliament on 8 January 2019, when she indicated that it would be open to the Scottish Government to reinvestigate the complaints once the ongoing police investigation had concluded.

7. [Redacted] was dissatisfied by this decision and appealed to the Scottish Information Commissioner on 1 December 2020. We made detailed submissions to the Commissioner in amplification of the position set out in paragraph 6 above. The Commissioner issued his Decision yesterday (27 May 2021) and a copy accompanies this minute.

8. The Commissioner did not accept that we were entitled to tell [Redacted] that we did not hold the information need to answer his requests for the reasons set out above. We are now required to carry out a fresh review, and to provide a response other than advising that we do not hold the information.

#### **Discussion**

9. Detailed consideration of the Decision is now underway by policy officials and the FOI Unit. The Decision appears to address a novel point about the interaction between the reduction of documents by the Court of Session and the FOI regime. Accordingly, detailed consideration will be required before we can make any recommendation about whether an appeal to the Court of Session should be considered. We will provide further briefing in due course.

#### **Handling**

10. [Redacted] received a copy of the Decision at the same time as the Scottish Government yesterday. He contacted Communications colleagues yesterday to advise that he intended to publish an article about the Decision in today's edition of *The Scotsman*. A copy of the article is in the Annex to this minute. You agreed last night that we would issue our standard line in the event of media interest in a Commissioner's decision: "We have received the Decision and are considering its terms."

#### **Recommendation**

11. You are invited to note the Commissioner's Decision, and to note that further briefing will be provided once the Decision has been considered in detail.

[Redacted]  
FOI Unit  
[Redacted]

28 May 2021

**OFFICIAL – SENSITIVE**

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Parliamentary Business					X
Lord Advocate					X
Solicitor General					X

Permanent Secretary DG Corporate DG Constitution and External Affairs Nicky Richards David Rogers Penny Curtis Gavin Henderson [Redacted] Legal Secretary to the Lord Advocate [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] Internal Communications [Redacted] [Redacted] [Redacted] Michelle Rennie PS/SpAds Colin McAllister
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[13 pages redacted]

Deputy First Minister and Cabinet Secretary for Covid Recovery

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

**202000094934 – [Redacted]**

**DECISION BY SCOTTISH INFORMATION COMMISSIONER (083/2021)**

**Purpose**

1. To provide further advice in connection with a decision by the Scottish Information Commissioner which relates to a request made by [Redacted] for information in connection with the Scottish Government's procedure for the handling of harassment complaints involving current or former ministers.

**Priority**

2. *Immediate.* The Scottish Information Commissioner has asked us to provide evidence of compliance with his decision by **Wednesday 21 July 2021**. Timing issues are discussed further below.

**Background**

3. On 19 August 2020, [Redacted] asked the Scottish Government:

*“Since the introduction of the Handling Harassment Complaints procedure in the Scottish Government detailed here:*

*<https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>, please provide the below information.*

1) *The date, nature of allegation, and the name of the person alleged to have harassed someone for each complaint dealt with using this procedure.*

2) *The outcome of each complaint including any official report.*

2a) *If a meeting took place as part of the outcome of the investigation into the complaint, I request the date, time, location, attendance record, agenda, minutes and any handouts provided to attendees.*

3) *Whether the harassment procedure has been used since the judicial review in 2018 won by the former First Minister Alex Salmond?*

3a) *If not, why not?”*

4. The full procedural background is set out in my minute of 28 May 2021. Shortly put, [Redacted] was dissatisfied with our initial response to questions 2 and 2a (we had advised him that it was exempt under a variety of exemptions). On review, we told him that we did not hold any information that would enable us to respond to these queries, on the basis that the reduction of the Permanent Secretary's decision in the complaints made by Ms A and Ms B against Mr Salmond by the Court of Session meant that the complaints returned to the position before the Permanent Secretary reached decisions on them, and that they could not therefore be said to have reached an outcome.

5. The Commissioner did not accept that we were entitled to tell [Redacted] that we did not hold the information needed to answer his requests for the reasons set out above. We discuss the Commissioner's reasoning below.

#### *Timing*

6. In my minute of 28 May 2021, we advised that the Ministers would either have to appeal the Commissioner's decision to the Court of Session by **8 July 2021**, or comply with it by **12 July 2021**. Regrettably, neither of these steps has yet been taken and we apologise for this. My initial minute was issued at the beginning of a period of leave and it was envisaged that further discussions would take place between the FOI Unit and the Organisational Continuity Team about our recommended approach on my return. However, this did not happen as a result of an oversight, and the error was only identified on Friday 9 July. This further advice has now been provided as a matter of urgency.

7. If you are minded to appeal the Commissioner's decision, it remains possible to do so although the Court of Session would have to grant permission for the appeal to be lodged late. If you are minded to comply with the decision, the Commissioner asked us on 13 July to provide evidence of compliance by 21 July 2021.

#### **Discussion**

8. Once a decision has been issued by the Commissioner, authorities have two options: to comply with the decision, or to appeal it to the Court of Session. Appealing suspends the requirement to comply until the Court disposes of the appeal. We set out advice on each option below.

#### *Appealing the Commissioner's decision*

9. Authorities can appeal a decision by the Commissioner on a point of law only: in other words, it is not sufficient for the authority simply to disagree with the Commissioner's decision and it must point to an error in law in the decision as a basis for the appeal. Appeals are accordingly relatively rare: while the Scottish Ministers appealed another decision about a request relating to Mr Salmond last autumn, the circumstances were exceptional as compliance with that decision risked putting the Ministers in breach of the court order preventing the taking of steps which would lead to the identification of complainers in Mr Salmond's criminal trial. We understand that no appeal had been made by the Ministers for around 10 years prior to that one.

10. It is normally apparent from an initial consideration of the Commissioner's decision that no error of law can be said to arise, and our initial advice to Ministers therefore narrates this in nearly all cases. In the present case, however, we reserved our position as it appeared to us that the decision required detailed consideration.

11. We have now considered the Commissioner's decision in some detail, and have discussed it with Organisational Continuity Team [Redacted]. Our initial concerns centred on whether the Commissioner's decision proceeded on the basis that the decision report, as reduced by the Court of Session, could be said to represent the outcome of Ms A and Ms B's complaints. [Redacted].

12. However, on a close reading of the Commissioner's decision we consider that it instead proceeds on the basis that our interpretation of the request was too narrow. On appeal, our

position was that we held the reduced decision report, and if [Redacted] had asked for the reduced decision report then we would have accepted that we held it. The Commissioner criticised this as an overly-pedantic approach: read short, he considered that we knew what [Redacted] wanted and arguing that we did not hold the thing he had asked for, when we could either a) have interpreted the request as being for the reduced decision report or b) asked [Redacted] to clarify what he meant, amounted to a failure to comply with our duties under FOISA.

13. On reflection, we accept that there may be some force in this criticism. The Commissioner's interpretation of the request appears to be a reasonable one (albeit not the one we previously favoured), and we cannot detect any error in his approach. Indeed, it is broadly consistent with his approach and that of his predecessors, which is to discourage attempts by authorities to take technical approaches to the scope of FOI requests in order to avoid disclosing information.

14. Furthermore, the section 60 Code of Practice, which is issued by the Scottish Ministers, indicates that requesters cannot always be expected to use technical terminology to identify the information that they want, or to use the precise language that an authority uses to describe the information. We argued that [Redacted] position as a professional journalist meant that he should be expected to describe precisely what he wanted to, by analogy with the position for solicitor requesters. However, the Commissioner did not accept that argument. We consider that it was open to him to reach that conclusion, as the decision of the Court of Session relating to solicitor requesters is confined to solicitors, and accordingly we do not think the Commissioner could be said to have erred in law in this respect either.

15. Overall, we do not think that the Commissioner's decision in fact raises a novel point. [Redacted]. However, the decision instead turns on the Commissioner's view that our interpretation of the request was too narrow, and while we might not agree with his conclusion we cannot say that it amounts to an error of law. Nor are there any wider consequences of the decision for reduced documents in general: the Commissioner has simply decided that this was a request, however imprecisely expressed, for a reduced document which we openly acknowledged that we hold.

**16. For these reasons, we have not identified an error of law in the Commissioner's decision and therefore we cannot recommend that the Ministers appeal the decision to the Court of Session.**

#### *Compliance with the decision*

17. The decision requires the Scottish Ministers to issue a new review response to [Redacted] in relation to the following parts of his request:

*“2) The outcome of each complaint including any official report.*

*2a) If a meeting took place as part of the outcome of the investigation into the complaint, I request the date, time, location, attendance record, agenda, minutes and any handouts provided to attendees.”*

18. The Commissioner has indicated that the response cannot be the same as our previous one, i.e. that the information is not held by the Ministers for the purposes of FOISA.

19. In relation to question 2, we hold a copy of the reduced decision report and the Commissioner has been clear that he considers that this is the information sought by

[Redacted]. Organisational Continuity colleagues and their legal advisers have advised that this report was the subject of detailed consideration last year in connection with the possibility of providing it to the Committee on the Scottish Government Handling of Harassment Complaints. They advise that the position reached was that:

- (a) some redaction to the report would be necessary to protect the identities of Ms A and Ms B, in compliance with Lord Woolman's order under the Contempt of Court Act 1981;
- (b) [Redacted]
- (c) when advised of the Government's proposal to release the redacted report to the committee, Mr Salmond and his legal advisers objected on data protection grounds and on the basis that the undertaking and reduction were linked and release of the report would constitute a breach of the undertaking;
- (d) the Committee ultimately took the position that it did not wish to see any information which the Scottish Government needed to get the agreement of the Court to release;
- (e) you decided, in light of that position, not to seek the Court's agreement to release a redacted version of the report to the Committee.

20. We confirm that, standing the Commissioner's decision, the decision report falls within scope of this particular request. [Redacted]. You wrote to the Committee convener last year to explain that even with redactions, the report contains useful and intelligible information including about the way in which the Permanent Secretary approached her decision-making task.

21. Under FOISA, authorities are required to disclose information which they hold if it is requested from them, unless an exemption applies. Accordingly, if the Ministers were minded not to disclose the remainder of the report (i.e. the information that has not been redacted under section 26(c) to comply with Lord Woolman's order) then an appropriate exemption would need to be identified and applied to that information. We canvass potential exemptions below, in light of Mr Salmond's previous objections to disclosure. We have not identified any further exemptions which appear to be relevant.

[Redacted]

22. [Redacted]

Section 26(c)

23. Information is exempt from disclosure under section 26(c) if its disclosure would constitute, or be punishable as, a contempt of court. Mr Salmond’s lawyers asserted that disclosure of the redacted decision report to the Committee would breach the undertaking given to the Court of Session by the Scottish Ministers at the conclusion of the judicial review proceedings, although the basis for this assertion is vague. We have therefore briefly set out our views on whether this exemption applies to the report for this reason.

24. It is the case that the Ministers gave an undertaking to the court at the conclusion of the judicial review proceedings, and that breach of such an undertaking would be punishable as a contempt of court. Accordingly, if disclosing the redacted decision report in response to an FOI request would place the Ministers in breach of their undertaking, the report is exempt in terms of section 26(c) of FOISA.

25. [Redacted]

26. **[Redacted]**

Section 38(1)(b): introduction

27. Information is exempt from disclosure under section 38(1)(b) if a) it is personal data and b) one of three conditions set out in section 38 are satisfied. It is accepted that the decision report is information relating to an identifiable natural person (Mr Salmond) and so it is personal data. Detailed consideration of the three conditions is set out in the Annex, and summarised below.

First condition: summary

28. The first condition is concerned with whether disclosure would contravene any of the data protection principles. If it would, then the first condition is met and the information will be exempt.

29. Consideration in relation to this condition centres on identifying whether we have a lawful basis to process Mr Salmond’s personal information in order to respond to this FOI request. Of the six lawful bases, the Commissioner has confirmed that only legitimate interest is likely to be relevant when dealing with FOI requests. [Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

30. [Redacted]

Second condition: summary

31. The second condition is concerned with whether disclosure of the information would contravene Article 21 of the UK GDPR, which gives the data subject the right to object to the processing of their personal data.

32. [Redacted].

33. However, where the section 38(1)(b) exemption depends on the second condition it is not an absolute exemption and it is necessary to go on to consider the public interest test. This requires authorities to identify the public interest factors which favour disclosure and those which favour maintaining the exemption, before weighing them against each other.

34. [Redacted]

35. [Redacted]

36. [Redacted]

Third condition: summary

37. We address this condition for completeness, because it applies where, if the data subject requested the same information under the UK GDPR, it would be withheld.[Redacted]

Section 38(1)(b): conclusions

38. [Redacted]

39. [Redacted]

40. [Redacted]

**Handling**

41. [Redacted]

42. [Redacted]

43. [Redacted]

44. [Redacted]

**Recommendation**

45. You are invited to:

- (a) note our apology for the handling of this decision, which has fallen short of the FOI Unit's usual standards;
- (b) agree that no appeal should be taken against the Commissioner's decision;
- (c) agree that we should comply with the decision by issuing a revised review response to [Redacted] at the earliest opportunity.

46. [Redacted]

47. [Redacted]

48. [Redacted]

[Redacted]  
FOI Unit  
[Redacted]

15 July 2021

OFFICIAL – SENSITIVE

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

Permanent Secretary  
DG Corporate  
Solicitor to the Scottish Government  
Ian Mitchell  
Caroline Beattie  
[Redacted]  
[Redacted]  
Colin McAllister  
Ross Ingebritsen

**Annex – detailed consideration of the section 38(1)(b) exemption**

1. As we set out above, information is exempt from disclosure under section 38(1)(b) if:
  - (a) it is personal data; and
  - (b) one of three conditions set out in section 38 are satisfied.
2. The three conditions are that:
  - (i) disclosure would contravene any of the data protection principles;
  - (ii) disclosure would contravene Article 21 of the UK GDPR (the data subject's right to object to processing in certain circumstances);
  - (iii) if the data subject requested the same information under Article 15(1) of the UK GDPR, it would be withheld from the data subject in accordance with certain provisions of the Data Protection Act 2018.
3. If the first condition applies, the exemption is absolute and we do not require to consider the public interest test. If the second or the third condition applies, we have to consider the public interest test and, unless the public interest in maintaining the exemption outweighs the public interest in disclosure, we must disclose the information.

*The first condition*

4. The first condition is that disclosure would contravene any of the data protection principles set out in Article 5 of the UK GDPR. The first principle is relevant here, i.e. that the data must be processed fairly and lawfully. To be lawful, one of the processing grounds in Article 6 must apply, and the Commissioner's guidance is clear that the only lawful basis for processing personal information in responding to an FOI request is legitimate interest (Article 6(1)(f) of the UK GDPR).

5. This allows personal data to be processed where:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”*

6. The Commissioner's guidance indicates that the condition can be split into three questions, as the Supreme Court did in *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55:

- (a) Does the person making the information request have a legitimate interest in obtaining the personal data?
- (b) If yes, is the disclosure of the personal data necessary to achieve that legitimate interest?
- (c) Even if the processing is necessary to achieve that legitimate interest, is that overridden by the interests or fundamental rights and freedoms of the data subject(s)?

7. [Redacted]

8. [Redacted]

9. Deciding whether the interests or fundamental rights and freedoms of the data subject override the legitimate interest of the requester (the third question) involves a balancing exercise. The Commissioner has observed that “[d]isclosure will always involve some intrusion of privacy. However, that intrusion will not always be unwarranted...”. Factors to consider include:

- (a) whether the information relates to the data subject’s public life (e.g. as an employee or public official) or their private life (home, family, social life etc)
- (b) the relative seniority of the person involved (broadly, the more senior they are then the less likely that disclosing information relating to their public life will override the legitimate interests of the requester)
- (c) whether disclosure is likely to cause harm or distress, particularly in connection with information about private or family life
- (d) whether the data subject has objected to disclosure (although an objection does not automatically override the legitimate interests of the requester)

10. [Redacted]

11. [Redacted]

12. [Redacted]

13. [Redacted]

*The second condition*

14. The second condition is that disclosure would contravene Article 21 of the UK GDPR (the data subject's right to object to processing in certain circumstances). The right to object is available where the authority is relying on legitimate interest as the basis for processing the personal data (as here). [Redacted]

15. [Redacted]

16. The Commissioner's guidance observes that, where a data subject exercises their rights under Article 21, then the information will be exempt from disclosure unless the public interest favours disclosure. In other words, even if the second condition is met (because the data subject objects to processing), we have to go on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

17. The public interest test assesses whether, in all the circumstances of the case, the public interest is better served by disclosing or withholding the personal data. It is not defined in FOISA but it has been described as "something which is of serious concern and benefit to the public". It has also been said that the public interest does not mean what is of interest to the public, but what is in the interest of the public. In practice, this means that authorities have to identify public interest factors which favour disclosure, public interest factors which favour maintaining the exemption, and weigh them against each other.

18. [Redacted]

19. [Redacted]

*The third condition*

20. The third condition is that, if the data subject requested the same information under Article 15(1) of the UK GDPR, it would be withheld from the data subject in accordance with certain provisions of the Data Protection Act 2018. [Redacted]