

Request from correspondence [REDACTED]  
27/10/21 @ 18:49  
Dear Tony

As a further foi request, can you send me all your correspondence relating to this case, both internal and external, so I can see who you checked what with.

Yours sincerely,

[REDACTED]

Also submitted  
Dear Tony

As a freedom of information request, can you send me all the letters received from the company specifying commercial confidentiality requirements relating to foi responses.

Yours faithfully,

[REDACTED]

This was registered under 202100251217. However it was withdrawn when it was explained to correspondent that I would include this information in my response to the request above as it formed part of the opinion on the decision provided.

Correspondent agreed to this.

Email 25/10/2021 11:53 From GFG to Tony Mcgale

Tony,

Nice to chat earlier. Thanks for sharing your proposed response which we fully support (subject to the query I've added in yellow below).

Please see an extract from the attached which [REDACTED] pull together in Feb/March this year (which commented on) for a related FOI [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

If you need anything else please let me know.

Many thanks

[REDACTED]

**Commercial Sensitivity of the Guarantee Fee**

[REDACTED]  
[REDACTED]

[Redacted]

[Redacted]

**From:** [Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot) <[Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot)>

**Sent:** 24 October 2021 21:15

**To:** [Redacted]

**Subject:** RE: FOI review request - need your view on whether the information could be provided at this stage - 22 October 2021

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Hi [Redacted]

I'm available on the number below. To explain in more detail the requester is highlighting that previously in the Scottish Government consolidated accounts the details of the fee payment were provided to a note on the accounts at page 65 of the document I have attached.

It states: £3m of guarantee fee income associated with the GFG Alliance Lochaber Guarantee

This is rounded up slightly in terms of actual payment made. Since that time though the reporting procedure has changed and no detail such as this is provided. I am currently considering a drafted response to the requester on this basis:

The Scottish Government receives a fee in return for the guarantee that exists with respect to the Lochaber smelter and the associated hydro-electric power plant. In 2016, the total discounted value of the fee premiums over the 25 year period was valued, as per methodology required by IAS 17 Provisions, at £18.7m. ***[Has this figure been released already/is in the public domain? I wasn't aware that it had.]*** The Scottish Government Consolidated Accounts for the year ended 31 March 2020 (published in December 2020) show the carrying value of this financial asset in the accounts was reduced to nil as a result of the implementation of the new accounting standard. An exemption under section 33(1)(b) FOISA (commercial prejudice) applies to the actual guarantee fee amount received by the Scottish Government in particular years.

You had stated in your review request that given the information was provided in the Consolidated accounts of 2018 you felt that it would be acceptable that the information was then released. The exclusion of the information in relation to the actual amounts paid are subject to the Exemption noted above. In reviewing this decision I considered the Public Interest Test, rather than any commercially sensitive classification of the information. It is not, in my opinion, a matter of satisfying the Public Interest Test to reveal the actual amount returned to Scottish Government in those periods, where disclosure would then be likely to prejudice the commercial interests of the company involved.

It would benefit me to know if your company still feel that the provision of the actual amount repaid in each year would provide you with a concern in relation to commercial prejudice. If that is the case I would need to be provided with the reasons as well. It may still mean we are asked to provide the actual figures by the information commissioner at an appeal or my decision is amended by a more senior official.

I hope this helps to explain further. Call if you need to.

Tony

Tony McGale  
Business Resilience Lead – Rapid Response Unit  
**Strategic Commercial Interventions Division**  
Scottish Government  
**During Covid-19 available only on e-mail, MSTeams or mobile** [REDACTED] |

Please copy in the Team mailbox if responding to an RRU email, this ensures we keep a corporate record where appropriate.

Rapid Response Unit [RRU@gov.scot](mailto:RRU@gov.scot)

[REDACTED]  
**Sent:** 24 October 2021 19:42

**To:** McGale T (Tony) <[Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot)>; [REDACTED]  
[REDACTED]

**Subject:** RE: FOI review request - need your view on whether the information could be provided at this stage - 22 October 2021

Thanks Tony – a call would be helpful thanks.

Are the fee payments in the accounts that Scot Gov publish as a separate line item?

Kr

[REDACTED]

[REDACTED]: [Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot) <[Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot)>

Sent: 24 October 2021 19:38

[REDACTED]

[REDACTED]

**Subject:** RE: FOI review request - need your view on whether the information could be provided at this stage - 22 October 2021

You don't often get email from [tony.mcqale@gov.scot](mailto:tony.mcqale@gov.scot). [Learn why this is important](#)

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Hi [REDACTED]

It's the guarantee fee income payments that have been made since 2018/19 to the Scottish Government that the requester wants to be released.

Hope that helps, happy to chat over this if it helps.

Tony

Sent with BlackBerry Work ([www.blackberry.com](http://www.blackberry.com))

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**From:** [REDACTED]

**Sent:** 24 Oct 2021 18:29

**To:** "McGale T (Tony)" <[Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot)>; [REDACTED]

**Cc:** Rapid Response Unit <[RRU@gov.scot](mailto:RRU@gov.scot)>

**Subject:** RE: FOI review request - need your view on whether the information could be provided at this stage - 22 October 2021

Tom,

Which actual document is being asked to now be released? Can this plz be shared so that we can review it? Or is it just the amount of the guarantee fee?

Thanks

[REDACTED]

**From:** [Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot) <[Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot)>

**Sent:** 22 October 2021 17:38

**To:** [REDACTED]

██████████  
**Subject:** FOI review request - need your view on whether the information could be provided at this stage - 22 October 2021

**Importance:** High

You don't often get email from [tony.mcgale@gov.scot](mailto:tony.mcgale@gov.scot). [Learn why this is important](#)

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Hi ██████████

Case 202100243733

I have been asked to conduct an FOI review on an FOI related to Lochaber payments. I need to check with yourselves at GFG if you would continue to request that this information is not released as it would be commercially sensitive.

The Scottish Government has received a request under the Freedom of Information (Scotland) Act 2002 (FOISA) for:

*I am requesting an internal review because I believe the response to my foI request is not satisfactory. Some information about the guarantee fee paid to the Scottish Government by the Lochaber Smelter is already the public domain. For example, fee income is disclosed in the Scottish Government's 2018/19 Consolidated Accounts on page 65 in Note 2. Commercial prejudice has not arisen by disclosure of the figures for 2018/19.*

<https://www.gov.scot/publications/scottish-government-consolidated-accounts-year-ended-31-march-2019/documents/>

*I do not believe disclosure of all the information requested would result in any significant commercial prejudice to any organisation.*

You have an interest in the information which has been requested because you are the company making the payments to Scottish Government. The decision to not release the information previously was on the basis of commercial prejudice to your organisation. The accounting structure has changed since the 2018/19 figures which mean that the amount paid is not declared.

Therefore, I am writing to ask you for your views on whether this information should be disclosed before we make a decision on the request.

Please note that this consultation is a courtesy, not a statutory obligation, and you do not have a veto on disclosure of the information.

Under the terms of FOISA, the decision on whether or not to release the information is for the Scottish Government alone. However, we will take account of your views. I should also explain that we can withhold information only if an exemption under FOISA applies to that information and, where applicable, the public interest in disclosure is not outweighed by the public interest in upholding the exemption.

You can find detailed information about FOISA on our website at:  
<http://www.scotland.gov.uk/about/foi> or on the Scottish Information Commissioner's website at:

<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp> In order to ensure that we meet our statutory duty to respond to the request not later than 20 working days of from the day following the date of receipt, I must ask for your views by 25 October 2021. Please accept my apologies for such a tight turnaround being required.

Regards

Tony

Tony McGale

Business Resilience Lead – Rapid Response Unit

**Strategic Commercial Interventions Division**

Scottish Government

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Rapid Response Unit [RRU@gov.scot](mailto:RRU@gov.scot)

26 October 10:33

Hi Tony,

Thanks for this, I think it would satisfy the first part of the commercial interests exemption. The FOI unit will still need to see the information that you are proposing to withhold (the documents if applicable) as we need to make sure that we aren't using 33(1) b as a blanket exemption in that we are using it for all the information, as it rarely applies to everything and instead we should be redacting on a line by line basis. You will also need to be mindful of the public interest test.

Happy to take a look over any revised drafts also as I think we discussed addressing the information that the requester claims is in the public domain? I may also have some further changes to make also

██████████

**From:** McGale T (Tony) <[Tony.McGale@gov.scot](mailto:Tony.McGale@gov.scot)>

**Sent:** 25 October 2021 19:10

██

██

**Subject:** FOI Review case 202100243733

**Importance:** High

Hi ██████████

Further to your email last week. I have now received further communication from the company and they continue to suggest that the provision of any additional information on the basis of payments of the fee guarantee payments being divulged. As you will see from their communications previously, I feel they have a valid point in the very commercially sensitive nature of the business and how it operates.

It would be therefor inappropriate to release the information concerning the fee payments in the subsequent years. Do let me know if you require any further information.

Regards

Tony

Tony McGale  
Business Resilience Lead – Rapid Response Unit  
**Strategic Commercial Interventions Division**  
Scottish Government

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Rapid Response Unit [RRU@gov.scot](mailto:RRU@gov.scot)

**GFG Alliance reasons for Commercial Prejudice**

[REDACTED]

**Sent:** 22 February 2021 21:40

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Subject:** RE: FOISA Submission - URGENT ATTENTION REQUIRED [IWOV-Active.FID20018964]

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Dear [REDACTED]

Many thanks for turning this around so quickly, it is appreciated. All noted and in particular your final point on information creep. We will weave these additional points into the submission.

Kind regards

[REDACTED]

**Sent:** 22 February 2021 21:24

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Subject:** [EXTERNAL] RE: FOISA Submission - URGENT ATTENTION REQUIRED [IWOV-Active.FID20018964]

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[REDACTED] - please see responses below in **red**. I've referred to para 4 (r.e. credit rating) of the memo we previously sent over so have reattached it for ease of reference

Thanks

[REDACTED]

[REDACTED]

**Sent:** 22 February 2021 16:35

[REDACTED]

[REDACTED]

[REDACTED]

**Subject:** FOISA Submission - URGENT ATTENTION REQUIRED [IWOV-Active.FID20018964]

**Importance:** High

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Hi [REDACTED]

Hope you are well. We were hoping you or [redacted] could help **urgently** in relation to the FOISA submission. In particular we need help with the following

1. A clear articulation of how disclosure of the gross liability figure under the guarantee disadvantages Simec's (and by extension GFG's) commercial interest in the grid rebalancing market?

*The Issue here is around the difficulty in articulating / understanding why disclosing the guarantee figure is the missing link that would allow a reasonably well-informed third party to calculate the price of electricity, SG believe the quantity of the electricity related to the guarantee would also need to be available to make that calculation; and perhaps there is technical knowledge that is lacking and we don't fully understand the disadvantage related to this aspect.*

*Is it the case that if the gross liability figure (i.e. the cost that the Hydro co charges to the Smelter for the power it consumes) were to be released, large energy consumers and producers [redacted] [redacted] will be able to calculate [redacted] the amount they are charging to the Smelter. GFG would therefore, be financially disadvantaged by competitors being able to calculate the price at which it is economical to for them to buy or sell power to the grid (thus reducing the hydro company's margins if other competitors were able to manipulate auctions with such knowledge). [redacted]*

[redacted]

*Essentially we need to get from Gross liability being released to a reduction of Simecs margins?*

**Further advice would be much appreciated.**

2. Secondly we would like a clear articulation of how the 2016 credit rating might be calculated via the release of this gross liability figure or alternatively how release of the figure would directly impact financing or refinancing activities of GFG. These are key points in our original drafts, that help us establish substantial prejudice.

*However, there is a lack of explanation of how the 2016 credit rating might be back calculated. Furthermore it has been noted that the Commissioner would be skeptical of the*

*argument that future lenders would not as part of their due diligence have sight of the full guarantee especially given that Companies House shows ABA have granted a bond and floating charge, a standard security and a charge over a bank account in favour of the Ministers, which all appear to be connected to the guarantee agreement. Can you speak to the commercial practicalities of this given your dealings with lenders?* [REDACTED]

[REDACTED]

The various security documents registered at Companies House are not exclusively linked to the guarantee amount. [REDACTED]

[REDACTED]

[REDACTED]

**We are on a tight deadline and require answers this evening/overnight, please advise if this is possible.**

Kind Regards,

[REDACTED]