

**ANNEXES TO FOI 202300365708**

**ANNEX A**  
**INTERNAL CORRESPONDENCE BETWEEN POLICY AND FOI UNIT STAFF ON**  
**HANDLING OF FOI 202100227221**  
*Emails in reverse chronological order*

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**From:** [REDACTED - section 38(1)(b)]  
**Sent:** 27 August 2021 09:07  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <foi@gov.scot>  
**Cc:** Bain R (Russell) <Russell.Bain@gov.scot>  
**Subject:** RE: FOR REVIEW BEFORE ISSUE: FOI 202100227221

Hi [REDACTED - section 38(1)(b)]

Many thanks for this. Thanks for pointing out the need for s38 – I had presumed it wasn't needed as the information is being released to the person named within the documents but I will update the Annex, reply and statement of compliance to reflect the necessary exemption.

I will update as above and issue our reply – as ever, very grateful for your help with managing the request.

Best wishes

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]  
Multilateralism and Representation  
**Directorate for External Affairs | Scottish Government**

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 27 August 2021 09:05  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>  
**Cc:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>  
**Subject:** RE: FOR REVIEW BEFORE ISSUE: FOI 202100227221

Hi [REDACTED - section 38(1)(b)]

Since this is in effect the third time that the redactions applied to the documents answering part b of this request have been considered I will not offer further comment here. Hopefully attaching these documents again rather than referring to previous requests will be received positively.

The Statements of Compliance proposed for release need redaction. Any mentions of [REDACTED - section 38(1)(b)] name need to be withheld under s38(1)(a)-personal data of which the applicant is the data subject. You will therefore also need to amend your draft adding a citation of this exemption. I'm happy to discuss if required.  
For convenience I have attached suggested wording:

*An exemption under section 38(1)(a) of FOISA (personal information) applies to some of the information requested because it is personal information of which you are the data subject, and so it is subject to the General Data Protection Regulation and the Data Protection Act 2018.*

*This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.*

Your own Statement of Compliance appears to be thorough and complete. Obviously this is not to be released.

Once the redactions and addition above have been completed I would be content from a technical FOI perspective.

Kind regards

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Adviser | Freedom of Information Unit | Scottish Government | 2W, St Andrew's House | Regent Road | Edinburgh | EH1 3DG | ( 0131 244 [REDACTED - section 38(1)(b)]

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**From:** [REDACTED - section 38(1)(b)]

**Sent:** 26 August 2021 17:00

**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <foi@gov.scot>

**Cc:** Bain R (Russell) <Russell.Bain@gov.scot>

**Subject:** FOR REVIEW BEFORE ISSUE: FOI 202100227221

[Recalled and replaced as I left off 2 attachments]

Hi [REDACTED - section 38(1)(b)]

I have completed the searches, exemption considerations and reply drafting for FOI 20210022722. I am now sharing with you as the original case triaging officer for the FOI Unit view- you noted when we last spoke that you were busy acting as case manager on another request but grateful if you can flag this email to colleague for their consideration so we can look to reply within the deadline of 30 August.

I have consulted policy colleagues and liaised with my clearing Deputy Director, Russell Bain (copied) in preparing this response and related compliance material.

Please see for your consideration:

<b>Draft reply</b> to the request	<a href="https://erdm.scotland.gov.uk:8443/documents/A34312480/details">https://erdm.scotland.gov.uk:8443/documents/A34312480/details</a>
<b>Annex A</b> copies of the statements of compliance for previous requests, to fulfil part (a) of this request	<a href="https://erdm.scotland.gov.uk:8443/documents/A34425142/details">https://erdm.scotland.gov.uk:8443/documents/A34425142/details</a>

<b>Annex B</b> – named as <i>DOCUMENT I</i> but to be renamed as <i>Annex B</i> once agreed. This is a copy of a partial release document in reply to part (b) of the request	<a href="https://erdm.scotland.gov.uk:8443/documents/A34428979/details">https://erdm.scotland.gov.uk:8443/documents/A34428979/details</a>
- <b>Annex B1</b> (title TBC)	See attachments by name. This is a proposed re-release for ease of reference to material the requester already has. <b>Please note as in the Statement of Compliance that I <u>reconsidered the original documents in their entirety for this new request</u> however there are still several exemptions that apply in relation to the request and no further information is proposed to be shared, hence why proposing we re-share.</b>
- <b>Annex B2</b> (title TBC)	
<b>Annex C</b> – reasons for not providing information - outputs from public interest test considerations for other materials as noted in statement of compliance	<a href="https://erdm.scotland.gov.uk:8443/documents/A34451396/details">https://erdm.scotland.gov.uk:8443/documents/A34451396/details</a>
<b>Statement of Compliance</b> (outstanding finalised case summary and FOI Unit view of case which I will capture, but to see the <u>schedule of documents considered- all referenced documents are available in eRDM</u> )	<a href="https://erdm.scotland.gov.uk:8443/documents/A34408300/details">https://erdm.scotland.gov.uk:8443/documents/A34408300/details</a>

Very happy to discuss with anyone further as needed

Best wishes

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Multilateralism and Representation

Directorate for External Affairs | Scottish Government

**From:** [REDACTED - section 38(1)(b)]

**Sent:** 26 August 2021 14:39

**To:** [REDACTED - section 38(1)(b)]@jabs.gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** For awareness only FOI 202100227221

Hi both

(ccing you [REDACTED - section 38(1)(b)] as you're online and [REDACTED - section 38(1)(b)] is not/won't be for some time)

Just a quick courtesy/for info note to say that the Statements of Compliance for FOIs each of you has previously handled from the same requester ([REDACTED - section 38(1)(b)]'s case 202100195000 and [REDACTED - section 38(1)(b)]'s review of it 202100203619) are going to be released as part of a further request by the same requester. FOI unit have indicated that they consider this document as any other under FOISA and from my review (with the clearing DD) no redactions are proposed.

[REDACTED - section 38(1)(b)]– we partly discussed at the outset of my handling of the request but confirming likelihood of the release for awareness.

Many thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Multilateralism and Representation

**Directorate for External Affairs | Scottish Government**

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**From:** [REDACTED - section 38(1)(b)]

**Sent:** 27 August 2021 10:47

**To:** Bain R (Russell) <Russell.Bain@gov.scot>

**Subject:** RE: For review: FOI 202100227221

Russell

For my records and to close off this chain:

- We spoke on 25/8 for a walkthrough of the below documents, proposed exemptions and discussions of public interests tests.
- As discussed, I've since drafted (and you've reviewed and cleared) a document (Annex C in the reply pack) outlining our PI Test considerations for the requester. This overall has resulted in 1 new document being shared with the requester – the process map for joining the EU.
- FOI Unit are content from a technical point of view with the proposed reply and attachments.
- I've retained copies on eRDM of: originals, copies with colour-coded exemption application and final reply versions in the eRDM folder for this request.

The background of any gaps between what I originally set out in the table below for release, and the final reply pack contents, are captured in the Statement of Compliance for this request.

Many thanks again for the support with handling this case

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Multilateralism and Representation

**Directorate for External Affairs | Scottish Government**

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**From:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>

**Sent:** 24 August 2021 18:25

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: For review: FOI 202100227221

Thanks [REDACTED - section 38(1)(b)],

I will review in the course of tomorrow.

Russell

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

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 24 Aug 2021 18:17

**To:** "Bain R (Russell)" <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>

**Subject:** For review: FOI 202100227221

Russell

Apologies for the length of this email – I hope it's somewhat clear.

For your review please see the below information regarding the response to FOI 202100227221:

In relation to a previous request made (202100203619), Mr [REDACTED - section 38(1)(b)] has requested (a) *"any reference to how you have concluded that the Public Interest test or indeed the section 29(1)(a) exemption should be applied. Could you firstly therefore please forward me any documentation you have which details this"* and requested (b) *"any analysis that the Scottish Government have carried out, since 2016, which assesses the timeframe which would be required for an Independent Scotland to re-join the EU"*.

Please see a hopefully clear schedule of documents: I have provided their original copies (original docs column) and a version where I propose redactions under differing exemptions where considered necessary (files for review column).

**I'd be grateful for your review and advice** on these as I understand there are many sensitivities regarding this work. I have made recommendations based on a presumption in favour of disclosure **however** a reminder that this FOI is the first I've handled which I suspect requires as much exemption so I am very much **looking for your advice on where I may have misapplied/ not applied any of the exemptions/exceptions noted.**

For document 3, there are minor possible changes to the information that has already been provided to the requester.

I've used the same key within documents and have copied this key into the Header of documents for ease of reference when reviewing.

- **section 29(1)(a)** formulation or development of government policy
- **section 30(b)(i)** the free and frank provision of advice
- **section 30(b)(ii)** the free and frank exchange of views for the purposes of deliberation
- **section 38** personal information
- **suggested release**
- **Out of scope**

Once we have come to an agreed approach I can collate and share with FOI Unit for their “health check” of our application of any exemptions.

Document title for purpose of this FOI	Original Documents	Proposed Action for this FOI	Files for review
Document 1	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Document 2	[REDACTED – section 30(c)]		
Document 3	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Document 4	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Documents 5-9	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Document x	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Document I	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Document II	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]
Document III	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]	[REDACTED – section 30(c)]

Hope this is clear but available to chat through at any point as needed. A reminder of **the 30/08/2021 reply deadline**.

Best wishes

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Multilateralism and Representation

Directorate for External Affairs | Scottish Government

**From:** Bain R (Russell) <Russell.Bain@gov.scot>

**Sent:** 16 August 2021 13:28

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: For action, request for searches: FOI 202100227221

[REDACTED - section 38(1)(b)],

To confirm that on the second part of Mr [REDACTED - section 38(1)(b)]’s request – “any analysis that the Scottish Government have carried out, since 2016, which assesses the

*timeframe which would be required for an Independent Scotland to re-join the EU" - I have no material in my inboxes on that.*

Russell

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**From:** Bain R (Russell)  
**Sent:** 16 August 2021 13:20  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: For action, request for searches: FOI 202100227221

Hi [REDACTED - section 38(1)(b)],

I have no information within the terms of the request that is additional to responses I provided previously to Mr [REDACTED - section 38(1)(b)]'s requests.

Regards,  
Russell

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 16 August 2021 12:43  
**To:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>  
**Subject:** FW: For action, request for searches: FOI 202100227221

Hello Russell

Welcome back from leave!  
Wondered if you'd be able to please return on the below as soon as feasible? If a return would be possible by COP tomorrow that would be ideal but please let me know if not doable.

Best wishes  
[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]  
Multilateralism and Representation  
Directorate for External Affairs | Scottish Government

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**From:** [REDACTED - section 38(1)(b)]  
**Sent:** 03 August 2021 12:51  
**To:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; Fleetwood D (David) <[David.Fleetwood@gov.scot](mailto:David.Fleetwood@gov.scot)>; Leaver E (Ellen) <[Ellen.Leaver@gov.scot](mailto:Ellen.Leaver@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; Johnson M (Martin) <[Martin.Johnson@gov.scot](mailto:Martin.Johnson@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** Dornan B (Brian) <[Brian.Dornan@gov.scot](mailto:Brian.Dornan@gov.scot)>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>; Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** For action, request for searches: FOI 202100227221

Dear Colleagues,  
(those in [cc] are copied for their awareness only at this stage)

**For action: grateful if colleagues marked as top line recipients could conduct searches relevant to the below and return outputs to me by 1500 Tuesday 10 August.** Please contact me if you anticipate any challenges with this deadline.

**Detail:** I have been assigned as case handler for FOI 202100227221 (Routine), final reply deadline 30/08/2021. Apologies for the length of this email; for context and clarity I have copied the entire piece of correspondence below. For the purposes of this FOI request, and in line with FOI Unit consultation, the request in question is considered **as in red text below**.

BEGINS

Dear Scottish Government,

Thank you for your most recent response. I am sure you have also now had a chance to review the Information Commissioners report into the appalling handling of my request and your application of the cost exemption under Section 12 of FOISA. As you are aware, I requested an unredacted copy of the "routes" document from you in order to ensure that this cost was not exceeded, however you have once again decided to apply an exemption under section 29(1)(a) of FOISA stating that the Scottish Government's policy on Scotland's eligibility for EU membership is still ongoing.

I have noted that the "internal correspondence" that I requested and that you have sent to me states on 3 September 2019 @15:27, "Thank you for this. I agree that 29(1)(a) seems the most appropriate exemption to apply in this instance and that your Public Interest argument reflects the position and will be defensible." This is followed by a further email of the same date @11.03 which states, "I understand you were previously advised that, based on only your description, the document sounded likely to fall under 29(1) (a)".

However, I have read through all the documents you have sent to me, and I am unable to find **any reference to how you have concluded that the Public Interest test or indeed the section 29(1)(a) exemption should be applied. Could you firstly therefore please forward me any documentation you have which details this.**

Secondly, in order to simplify my request, I would like to receive **any analysis that the Scottish Government have carried out, since 2016, which assesses the timeframe which would be required for an Independent Scotland to re-join the EU.**

Yours faithfully,  
[REDACTED - section 38(1)(b)]  
ENDS

As you will see above, the request comes in two parts, the first of which refers to a previous request (FOI 202100203619) and for which I will be conducting searches directly in order to respond. I am contacting you primarily with regards the second part of the request seeking **"any analysis that the Scottish Government have carried out, since 2016, which assesses the timeframe which would**



**be required for an Independent Scotland to re-join the EU". Please note the timeframe for this part of the request is "since 2016" up to the date of request which was 30/07/2021.**

Where possible, please return results/outputs with an indication of folders searched/ terms used so I can reflect this in the record of searches and relevant compliance documents. Where applicable, please provide any nil return(s) via email, again with an indication of where was searched.

Many thanks in advance, please don't hesitate to get in touch in the interim as needed.

Best wishes,

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Multilateralism and Representation

**Directorate for External Affairs | Scottish Government**

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**From:** [REDACTED - section 38(1)(b)] **On Behalf Of** Freedom of Information

**Sent:** 02 August 2021 08:41

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** Wightman S (Scott) <Scott.Wightman@gov.scot>; Freedom of Information <foi@gov.scot>;

[REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** FW: TRIAGE - FOI - CEA - Independent Scotland to re-join the EU - 202100227221

Hello [REDACTED - section 38(1)(b)]

Please see the FOI request and triage advice below for allocation and processing. It appears to be a two part request, the first part being a metadata request on the requesters previous requests as noted in the last review.

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.

Regards

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Adviser | Freedom of Information Unit | Scottish Government | 2W, St Andrew's House | Regent Road | Edinburgh | EH1 3DG | ( 0131 244 [REDACTED - section 38(1)(b)]

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 FOI(S)A.

Under FOISA we have a statutory obligation to respond promptly to all requests. Following the Scottish Information Commissioner's intervention into the Scottish Government's FOI 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 **30/8/21**

### **Actions**

Please now 'assign to self' through the 'Case Actions' tab on MiCase [202100227221](#). Send the requester an FOI specific acknowledgement letter, following the standard template ([FOISA Request Templates](#), page 5).

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 FOI Handling process is provided by our [Checklist Guidance](#) document. There is also high level [Saltire Guidance](#) regarding FOI 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 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 request. This includes detailed guidance on the various exemptions 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>

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-----Original Message-----

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

Sent: 30 July 2021 16:24

To: [REDACTED - section 38(1)(b)]@gov.scot>

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

Subject: TRIAGE - FOI - CEA - Independent Scotland to re-join the EU - [REDACTED - section 38(1)(b)]-MiCase 202100227221

-----Original Message-----

From: [REDACTED - section 38(1)(b)] <[request-596611-5fac04af@whatdotheyknow.com](mailto:request-596611-5fac04af@whatdotheyknow.com)>

Sent: 30 July 2021 15:52

To: Central Enquiry Unit <CEU@gov.scot>

Subject: Re: Your recent correspondence with Scottish Government and partner agencies - 202100203619

Dear Scottish Government,

Thank you for your most recent response. I am sure you have also now had a chance to review the Information Commissioners report into the appalling handling of my request and your application of the cost exemption under Section 12 of FOISA.

As you are aware, I requested an unredacted copy of the "routes" document from you in order to ensure that this cost was not exceeded, however you have once again decided to apply an exemption under section 29(1)(a) of FOISA stating that the Scottish Government's policy on Scotland's eligibility for EU membership is still ongoing.

I have noted that the "internal correspondence" that I requested and that you have sent to me states on 3 September 2019 @15:27, "Thank you for this. I agree that 29(1)(a) seems the most appropriate exemption to apply in this instance and that your Public Interest argument reflects the position and will be defensible."

This is followed by a further email of the same date @11.03 which states, "I understand you were previously advised that, based on only your description, the document sounded likely to fall under 29(1) (a)".

However, I have read through all the documents you have sent to me, and I am unable to find any reference to how you have concluded that the Public Interest test or indeed the section 29(1)(a) exemption should be applied. Could you firstly therefore please forward me any documentation you have which details this.

Secondly, in order to simplify my request, I would like to receive any analysis that the Scottish Government have carried out, since 2016, which assesses the timeframe which would be required for an Independent Scotland to re-join the EU.

Yours faithfully,

[REDACTED - section 38(1)(b)]

-----Original Message-----

Please find attached a response to your correspondence.

\*\*\*\*\*

This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please

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Communications with the Scottish Government may be monitored or recorded in order to secure the effective operation of the system and for other lawful purposes. The views or opinions contained within this e-mail may not necessarily reflect those of the Scottish Government.

\*\*\*\*\*

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Please use this email address for all replies to this request: [request-596611-5fac04af@whatdotheyknow.com](mailto:request-596611-5fac04af@whatdotheyknow.com)

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies: <https://www.whatdotheyknow.com/help/officers>

For more detailed guidance on safely disclosing information, read the latest advice from the ICO: <https://www.whatdotheyknow.com/help/ico-guidance-for-authorities>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

**ANNEX B**

**INTERNAL CORRESPONDENCE BETWEEN POLICY AND FOI UNIT STAFF ON  
HANDLING OF FOI 202100234945, THE REVIEW OF FOI 202100227221**

*Emails in reverse chronological order.*

**From:** Bain R (Russell) <Russell.Bain@gov.scot>  
**Sent:** 27 September 2021 14:15  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Leaver E (Ellen) <Ellen.Leaver@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <Scott.Wightman@gov.scot>  
**Subject:** Fol - [REDACTED - section 38(1)(b)]- 202100234945 - Final Response - 27.9

[REDACTED - section 38(1)(b)],

Many thanks. I've tracked some minor tidying up – a missing word and a couple of commas, which hopefully helps. Other than these tweaks, I'm content for this to issue.

Russell

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 27 September 2021 14:09  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Bain R (Russell) <Russell.Bain@gov.scot>  
**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Leaver E (Ellen) <Ellen.Leaver@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <Scott.Wightman@gov.scot>  
**Subject:** RE: URGENT - FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]- 202100234945 - Final response and documents for review - deadline 27th September 2021 - Final response for clearance

[REDACTED - section 38(1)(b)]/Russell

A couple of very minor amendments from me, but I can confirm I am otherwise content with the response and approach to the documents for this review for FOI Unit interests.

[REDACTED – section 30(c)]

Kind regards

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 27 September 2021 13:58  
**To:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>  
**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Leaver E (Ellen) <[Ellen.Leaver@gov.scot](mailto:Ellen.Leaver@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>  
**Subject:** URGENT - FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]-202100234945 - Final response and documents for review - deadline 27th September 2021 - Final response for clearance  
**Importance:** High

Russell,

Please see the suggested draft response to [REDACTED - section 38(1)(b)].  
Grateful for your views and of course happy to make any amends you see fit.  
Once you are content I will issue along with the additional information as set out below ahead of the midnight deadline.

Many Thanks  
[REDACTED - section 38(1)(b)]

[REDACTED – section 30(c)]

[REDACTED - section 38(1)(b)] | Head of the UK, EU and International Relations Team | Scotland House - 5<sup>th</sup> Floor | 58 Victoria Embankment | London | EC4Y 0DS  
**Tel:** 0131 244 [REDACTED - section 38(1)(b)]  
**Mob:** 07[REDACTED - section 38(1)(b)]  
[@ScotGovLondon](#)

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 27 September 2021 09:38  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>  
**Subject:** 202100234945 - FOI Unit Advice - draft review response - 27.09.21

Morning [REDACTED - section 38(1)(b)]

It good to have Russell's views confirming that some further information can be disclosed in this case.

I appreciate that time is tight so I have tracked some suggested changes to your decision letter for you to consider. I think this captures all of the points of the decision, but please check you are content.

It would be helpful to have an updated statement of compliance just confirming the agreed position of the documents on review (as I anticipate an appeal), but that does not necessarily have to be in place prior to issuing the response.

[REDACTED – section 30(c)]

I hope this gives you enough to finalise, but I am around for much of the day if you do need any further advice.

Kind regards

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

---

**From:** Bain R (Russell) <Russell.Bain@gov.scot>

**Sent:** 27 September 2021 08:04

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Leaver E (Ellen) <Ellen.Leaver@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <Scott.Wightman@gov.scot>

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)] - 202100234945 - Final response and documents for review - deadline 27th September 2021 - Docs 3 and 4

[REDACTED - section 38(1)(b)],

Thanks again for all of your work on this. On your specific questions:

**Document 4**, page 17, para 1. My concern here is that despite the fact that we clearly use the word “may” in the second sentence, this will be misinterpreted as “will”. However, commentary on the point about the potential complexity of negotiations is in the public domain, so this could be released as suggested by FOI unit.

**Document 5.** Agree that this section of text could be released.

**Document 6** paras 3 & 7. Content to release the small amount of additional information as outlined in your e-mail.

**Document iii** para 12 b. I remain of the view that this information should be withheld and I’m content that it should be withheld on the grounds of section 30(b)(ii) the free and frank exchange of views for the purposes of deliberation rather than 29 a) formulation of Gov policy.

Let me know if there is anything else you need from me,

Russell

---

**From:** [REDACTED - section 38(1)(b)]

**Sent:** 24 September 2021 17:14

**To:** Bain R (Russell) <Russell.Bain@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Leaver E (Ellen) <Ellen.Leaver@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <Scott.Wightman@gov.scot>

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]- 202100234945 - Final response and documents for review - deadline 27th September 2021 - Docs 3 and 4

Russell,

As per my previous email.

Ellen, [REDACTED - section 38(1)(b)], copying you in for awareness and comment in relation to documents 5 and 6.

**Documents 3 and 4** - the Routes documents, I have focussed the scope of my review to address the correspondent's specific "timeline" request, therefore a lot more of both documents are assessed as out of scope (highlighted in pink). After reviewing the documents I am content that the original exemptions used to withhold the information still stand and no additional information would be disclosed, with the exception of extract highlighted below which FOI have asked us to reconsider:

**Document 4**, page 17, para 1 - "The speed of the negotiation and ratification process is contingent on political will. The further the final Brexit deal diverges from the current status quo, the more complex the process may become for an independent Scotland." FOI are of the view both statements are relatively innocuous and don't divulge any sensitive information and could be released.

**Document 5** - Extract draft Cabinet paper [REDACTED – section 30(c)]- paragraph 9 is the section originally assessed as in scope.

*Para 9. It is important to note that there are several stages prior to the start of accession negotiations. The European Commission assesses the applicant state's capacity to meet the criteria set by the Copenhagen European Council of 1993 (plus any specific conditions), then EU governments must unanimously agree to formally open negotiations. Finally the mandate for negotiations with the candidate country must also be agreed. As such, my officials will also be examining Copenhagen criteria to ensure that we meet the conditions for opening negotiations as part of this work. An overview of the criteria for accession is attached at Annex A.*

FOI unit assess the first part of the paragraph as statement of fact around the accession criteria and containing no sensitive information. Similarly the last sentence is a high level statement which does not relate to any sensitive information. **Fol unit suggest we release the information.** [REDACTED – section 30(c)]

**Document 6** - Constitutional Futures - EU Accession - Having now reviewed this paper in full, we think paragraph 3 [REDACTED – section 30(c)] falls within scope of the request.

*Para 3. Following a Yes vote but pre-independence, Scotland would not yet be a formal (legally and constitutionally) independent country and it is doubtful that the Commission and Member states*



would agree that the first condition for submission of an application - being a European state - was met. So it will not be possible to negotiate EU accession to take effect on the date of legal independence. Consequently a proposition on EU accession requires a route map charting Scotland's transition to membership of the EU from the date of independence to the date of EU accession.

Fol colleagues have advised that the first sentence of that paragraph is a statement of fact and therefore wouldn't cause demonstrable harm if released, the highlighted text in red we would still withhold on grounds of free and frank provision of advice. Similarly paragraph 7 was entirely withheld previously on the same exemption, however Fol have queried whether demonstrable harm would be caused by releasing the paragraph with the exception of the highlighted section:

*Para 7. The decision on how quickly Scotland will become a full member will be a matter for both the Scottish and EU member state governments. While some commentators have suggested it could take 3-4 years to negotiate accession, it is important to remember that Scotland will be in a unique position having already been in the EU and therefore complying with most of the acquis. On the other hand this timing will also depend on how the Scottish Government approaches other policy issues, including the question of an independent currency .*

**Document X** – No additional information proposed for release, updated exemptions to reflect some of the document is out of scope.

**Document i** – No additional information proposed for release.

**Document ii** – Having reconsidered following Fol unit advice assess **this document is out of scope.**

**Document iii** - As discussed we previously we identified paragraph 12 b) to fall within scope. Fol unit have asked us to consider whether this is sensitive information and really needs to be exempt. If we remain of the view this should be exempt then suggest we withhold on the grounds of section 30(b)(ii) the free and frank exchange of views for the purposes of deliberation rather than 29 a) formulation of Gov policy.

*Para 12 b) the timing of when to submit a declaration of intent would be for an independent Scotland to decide. How long an accession process takes thereafter will depend on the initial assessment of Scotland's compliance with the EU acquis, how quickly Scotland meets any stipulated criteria, what transitional derogations are sought and granted, and the receptiveness of EU member states and the European Parliament to Scotland's candidacy.*

Following your comments I will update my response to the correspondent accordingly and get this revised version clear via Fol colleagues on Monday, in the hope we can still issue on Monday before the midnight deadline.

Thanks a lot

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Head of the UK, EU and International Relations Team |Scotland House - 5<sup>th</sup> Floor | 58 Victoria Embankment | London | EC4Y 0DS

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 24 September 2021 16:00

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]- 202100234945 - Final response and documents for review - deadline 27th September 2021 - Docs 3 and 4

Thanks [REDACTED - section 38(1)(b)]. Following our conversation earlier with [REDACTED - section 38(1)(b)] about scope in relation to the request I handled, this all looks to make good sense. Apologies to have created such work for you in reconsidering all the info in relation to scope. I have **added some comments** below on the other pieces. One single bit for Russell's consideration if you agree..

[REDACTED - section 38(1)(b)]  
Directorate for External Affairs | Scottish Government

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-----Original Message-----

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 24 September 2021 15:13

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** FW: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]- 202100234945 - Final response and documents for review - deadline 27th September 2021 - Docs 3 and 4

Sorry, I got an error message first time round, hopefully this time works.

[REDACTED - section 38(1)(b)] | Head of the UK, EU and International Relations Team | Scotland House - 5th Floor | 58 Victoria Embankment | London | EC4Y 0DS  
Tel: 0131 244 [REDACTED - section 38(1)(b)]  
Mob: 07[REDACTED - section 38(1)(b)]  
@ScotGovLondon

---

-----Original Message-----

**From:** [REDACTED - section 38(1)(b)]

**Sent:** 24 September 2021 15:02

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]- 202100234945 - Final response and documents for review - deadline 27th September 2021 - Docs 3 and 4

Hi,

Based on my understanding of [REDACTED - section 38(1)(b)]'s advice I have went back through documents 3 and 4 and only focussed on sections which directly relate to the timeframe for joining the EU.

A fair bit of pink in both documents now reflecting large chunks are out of scope of this request. There are still a small number of sections where we are withholding information for the reasons set out previously which I think still stand.

1 point for clarification - [REDACTED - section 38(1)(b)] suggests Document 3, page 7, section 6 (the proposed timeline) is more substantial in the previously released annex? Any idea how that has happened? **No, no idea. I don't recall noting any discrepancy like that when cross referencing the docs during original case handling.**

The paragraph below seems innocuous and [REDACTED - section 38(1)(b)] suggests release, are you content or should we put to Russell for review:

Document 4, page 17, para 1 - "The speed of the negotiation and ratification process is contingent on political will. The further the final Brexit deal diverges from the current status quo, the more complex the process may become for an independent Scotland." **First sentence I think is fine. The second I think might be considered to have some detrimental impact to free/frank or future policy development - that's just an inkling, however, so I think we'd best confirm with Russell.**

Also I'm not sure what to do with the? issue that [REDACTED - section 38(1)(b)] highlights, I'll speak to her direct about that. **Agree worth checking with [REDACTED - section 38(1)(b)].**

I'm just going to draft the email to Russell on the wider papers just now but I think they are more straightforward asks of him.

How does this look to you? Feel free to suggest amendments.

Cheers

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Head of the UK, EU and International Relations Team | Scotland House - 5th Floor | 58 Victoria Embankment | London | EC4Y 0DS  
Tel: 0131 244 [REDACTED - section 38(1)(b)]  
Mob: 07[REDACTED - section 38(1)(b)]  
@ScotGovLondon

---

-----Original Message-----

From: Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>

Sent: 24 September 2021 12:40

To: [REDACTED - section 38(1)(b)]@gov.scot>

Cc: [REDACTED - section 38(1)(b)]@gov.scot>

Subject: RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)] - 202100234945 - Final response and documents for review - deadline 27th September 2021

[REDACTED - section 38(1)(b)],

Thank you - this is really clear and helpful. I've noted the Monday morning deadline.

Russell

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-----Original Message-----

From: [REDACTED - section 38(1)(b)]@gov.scot>  
Sent: 24 September 2021 12:09  
To: Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>  
Cc: [REDACTED - section 38(1)(b)]@gov.scot>  
Subject: RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]-  
202100234945 - Final response and documents for review - deadline 27th September 2021

Russell,

[REDACTED - section 38(1)(b)] and I have now had a helpful chat with the FoI Unit in relation to the above case.

We have had a clear steer to focus on information relating to the "timeframe" only and therefore I'll be tweaking the proposed exemptions and information assessed as within scope to reflect that.

In addition, they have asked us to reconsider whether a small cohort of sections of information which we had originally considered exempt from release could be released, as being seen in isolation it doesn't contain sensitive material. I intend to set these pieces of information out to both you and [REDACTED - section 38(1)(b)] by email over the course of the next couple of hours for your consideration and decision.

If at all possible it would be grateful to have your views back by 10am on Monday. That will enable me to put forward our suggested amended response forward to FoI unit for final clearance and issue the response ahead of the midnight deadline.

I'll be in touch shortly.

Many Thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Head of the UK, EU and International Relations Team | Scotland House - 5th Floor | 58 Victoria Embankment | London | EC4Y 0DS

---

-----Original Message-----

**From:** [REDACTED - section 38(1)(b)] On Behalf Of Freedom of Information

**Sent:** 23 September 2021 16:52

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>;

[REDACTED - section 38(1)(b)]@gov.scot>; Webster J (John) <[John.Webster@gov.scot](mailto:John.Webster@gov.scot)>;

Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]-

202100234945 - Final response and documents for review - deadline 27th September 2021

Hi [REDACTED - section 38(1)(b)]

Thanks for sight of your proposed review response, I will have some comments on your draft decision letter, but I have some comments in relation to the documents and approach which given the deadline I thought I would share with you in the first instance.

I have attached copies of the documents with some comments for you to consider but would also offer the following comments in relation to the approach and areas where I think some further consideration or clarification is required.

I am concerned that the information disclosed with the initial response may have given the impression that we are withholding more information in this case than we are. The documents do not make any distinction between the information which has been redacted because it is exempt and information which has been redacted because it is out of scope. Information removed because it does not fall within the scope of the request would usually be marked as [redacted - out of scope].

In addition to this, a full further copy of documents 3 and 4 (which were considered and partially redacted in response to the earlier request) were released with our initial response. Whilst I appreciate that this would have been in an attempt to be as helpful as possible, this request did not ask us to re-visit all of the exemptions previously applied in the previous case, it only effectively asks for a meta-data request in relation to the decision making process for applying those exemptions.

The only information within any of these documents that falls within the scope of this new request is information which details any analysis that the Scottish Government have carried out, since 2016, which assesses the timeframe which would be required for an Independent Scotland to re-join the EU. You will see I have added some specific comments about scope, but I think we need to be much clearer about what information falls within scope of this new narrower request. One of the criticism in the previous appeal was in relation to identifying the specific information and scope so OSIC would be highly critical if we found ourselves in that position again.

I will let you consider the above advice and comments in the documents, and if it would be helpful to have a chat in the morning then feel free to pop some time in my calendar.

Kind regards

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

---

-----Original Message-----

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 22 September 2021 13:51

**To:** Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; Webster J (John) <[John.Webster@gov.scot](mailto:John.Webster@gov.scot)>

**Subject:** FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)] -

202100234945 - Final response and documents for review - deadline 27th September 2021

[REDACTED - section 38(1)(b)],

Thanks for the helpful advice yesterday.

Following the FOI unit steer I have focussed the review on the points of dissatisfaction highlighted by [REDACTED - section 38(1)(b)] in his request for a review (the second section of his original request).

Attached is the original schedule of documents, you will note documents highlighted in pink have not been attached as they were either not deemed within the scope of the review (docs 1 and 2) or were assessed as out of scope in the original response. In reviewing the documents I have assessed that a small amount of information in document iii (paragraph 12 b) is within the scope of the request and have therefore attached the full document for you to consider.

I have attached the full documents of those assessed as in scope for your consideration (docs 3,4,5,6,x, i,ii and now iii). The original requester put together a helpful key of the exemptions and the documents have been highlighted to reflect the exemptions we are using to withhold the info.

I drafted a response in line with our conversation confirming I am upholding the original decision (minus the additional info found but still exempt). International futures colleagues have also provided me with a further paragraph in an attempt to address the first point made by [REDACTED - section 38(1)(b)] around timescales/ currency etc though this proved challenging given the hypothetical nature of the questions posed by the correspondent.

As this decision essentially upholds the original decision, if you FOI unit endorse that assessment my intention would be to issue the response after securing clearance at DD and Director level without the need for SPAD/ Ministerial clearance. Please let me know if you think otherwise.

Happy to discuss.

Many Thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Policy Manager | International, EU & UK Relations Team

| Scotland House - 5th Floor | 58 Victoria Embankment | London | EC4Y 0DS

Tel: 0131 24[REDACTED - section 38(1)(b)]

Mob: 07[REDACTED - section 38(1)(b)]

**From:** [REDACTED - section 38(1)(b)]  
**Sent:** 22 September 2021 08:55  
**To:** Bain R (Russell) <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: For review: document III relating to FOI 202100227221

Thanks Russell,

I am aiming to put forward a draft response and documents for review to FoI unit later today, I'll copy you in.

In relation to the response, the FoI unit have suggested including a supplementary paragraph in the response to address the point below made by [REDACTED - section 38(1)(b)] when requesting a review.

Could int futures colleagues provide a response to the point highlighted below please. It doesn't need to be lengthy but I think it will help demonstrate to the information commissioner we are trying to be helpful should [REDACTED - section 38(1)(b)] seek an appeal.

*"I have also noted that you have claimed that, "Ministers and officials need to be able to consider all available options and to debate those rigorously, to understand fully their possible implications. Officials' candour in doing so will be affected by their assessment of whether the discussions on Scotland's eligibility for and timeframe related to future EU membership will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development," and that "Disclosing the content of free and frank discussions on Scotland's future membership of the EU will substantially inhibit such discussions now and in the future, particularly because these they are still ongoing and decisions have not been taken, and relate to sensitive issues."*

*Perhaps you could clarify how, if this assessment was to deem that we would be unlikely to meet the criteria for say, several decades due to your policy on currency, if at all, you could still assert that EU membership is in Scotland's best interests. I fail to see how you can determine one, and be happy to produce numerous documents stating as such, without the other. At no point in any documentation in relation to the EU have you ever stated that your position is based on any potential timeframe."*

A contribution by **close of play Thursday** would be really helpful.  
Happy to discuss.

Many Thanks  
[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Policy Manager | International, EU & UK Relations Team | Scotland House - 5<sup>th</sup> Floor | 58 Victoria Embankment | London | EC4Y 0DS  
**Tel:** 0131 244 [REDACTED - section 38(1)(b)]  
**Mob:** 07[REDACTED - section 38(1)(b)]  
[@ScotGovLondon](https://twitter.com/ScotGovLondon)

**From:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>  
**Sent:** 22 September 2021 08:03  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: For review: document III relating to FOI 202100227221

[REDACTED - section 38(1)(b)],

Many thanks for this.

I have reviewed the relevant parts of the document. On review, I can see that there is a case for considering paragraph 12 (b) in scope, although subject to the 29(1)(a) exemption. I am still of the view that the remainder of the paragraphs in question are not in scope.

[REDACTED - section 38(1)(b)]– thanks for your work on this review and please feel free to get in touch if required.

Russell

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 21 September 2021 16:44  
**To:** Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>  
**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** For review: document III relating to FOI 202100227221

Russell

The FOI I recently handled (202100227221) has had a request for review returned. [REDACTED - section 38(1)(b)] is leading this review and has raised a question about the original case handling regarding the classification of parts of *Document III* which my statement of compliance notes was withheld in its entirety as out of scope. I've copied the eRDM link below but, by way of reminder: Document III was a December 2019 submission on the "requirements for EU membership". Prior to the decision as part of our catch-up call on 25/8 to consider the entire submission *Out of scope*, I had marked up the document with a view to applying various exemptions to the document.

The pertinent part of the original request sought: *"any analysis that the Scottish Government have carried out, since 2016, which assesses the timeframe which would be required for an Independent Scotland to re-join the EU"*.

Document III as marked up when shared with you is visible here: - [INTERNAL LINK DELETED – SEE SEPARATE ANNEX OF DOCUMENTS RELEASED]

As part of the review, [REDACTED - section 38(1)(b)] is specifically querying whether paragraphs 10-13 of Document III should in fact have been considered *in scope* of the original request (copied above for ease of reference), even if subsequently then considered



exempt. I'd be grateful if you can confirm if, upon review, you consider the entire document and therefore paras 10-13 to be out of scope or if you would consider on review that paragraphs 10-13 should have been considered *in scope* of the original request.

N.B. my mark-up shows my line by line consideration that, even if in scope, the information would not be for release as it would likely be subject to exemption. Therefore, whilst this would feed into the outputs of [REDACTED - section 38(1)(b)]'s review, any reconsideration would not necessarily mean the information is released. If the information was considered in-scope, the proposed exemption application would of course be subject to the public interest test.

Happy to discuss if needed

Best wishes

[REDACTED - section 38(1)(b)]

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 21 September 2021 10:45  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: URGENT - FoI - request for copies of full documents

Hi [REDACTED - section 38(1)(b)]

I've attached the document as requested.

[REDACTED - section 38(1)(b)]

Head of Policy Development, International Futures | Directorate for External Affairs | Scottish Government |  
Mobile: +44 (0)7[REDACTED - section 38(1)(b)]

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**From:** Leaver E (Ellen) <Ellen.Leaver@gov.scot>  
**Sent:** 21 September 2021 10:30  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: URGENT - FoI - request for copies of full documents

[REDACTED - section 38(1)(b)]

See attached. I considered only the section provided to be in scope of the request, the remainder of the document I considered out of scope.

Ellen

**Ellen Leaver | Deputy Director, Local Government and Analytical Services Division | Scottish Government | Mob: +44 7796 707 915**

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 21 September 2021 10:26  
**To:** Leaver E (Ellen) <[Ellen.Leaver@gov.scot](mailto:Ellen.Leaver@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** URGENT - FoI - request for copies of full documents

[REDACTED - section 38(1)(b)], Ellen,

I am currently undertaking a review of FoI case XXXX requested by [REDACTED - section 38(1)(b)]. To move on to the next stage of the approval process, I am now required to send the full original documents of all those assessed as in scope to the FoI unit for their consideration and sign off. You both provided an extract from documents which you assessed as in scope of the original request – see below:

- **Ellen Leaver** provided an in-scope section of a submission titled CONSTITUTIONAL FUTURES: EU ACCESSION from February 2020. [REDACTED – section 30(c)]
- **[REDACTED - section 38(1)(b)]** provided an in-scope section of a draft Cabinet paper [REDACTED – section 30(c)]

I would be grateful if you could provide me with a copy of the full document which I can put forward to foI unit.

Grateful if you could send this across **today if at all possible**.

Happy to discuss.

Thanks

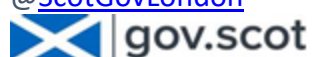
[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Policy Manager | International, EU & UK Relations Team | Scotland House - 5<sup>th</sup> Floor | 58 Victoria Embankment | London | EC4Y 0DS

**Tel:** 0131 244 5581

**Mob:** 07738 168 341

@[ScotGovLondon](#)



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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 21 September 2021 09:33  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: FoI - request for copies of full documents

Hi [REDACTED - section 38(1)(b)]

That's correct, I did not receive originals of those documents but, as you'll see from records of the FOI I handled, the in-scope extracts were both considered and exemptions applied under s291(a) and s 30(b)(i) respectively.

In response to a request for information:

**Ellen Leaver** provided an in-scope section of a submission titled CONSTITUTIONAL FUTURES: EU ACCESSION from February 2020. [REDACTED – section 30(c)]

**[REDACTED - section 38(1)(b)]** provided an in-scope section of a draft Cabinet paper [REDACTED – section 30(c)]

Happy to chat later as in diaries

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Directorate for External Affairs | Scottish Government

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 20 September 2021 16:44

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** FoI - request for copies of full documents

Hi [REDACTED - section 38(1)(b)],

With Mr R's visit out of the way, I'm now dedicating some proper time to this FoI review. I reviewed all the docs and I'm content with the initial assessments, it was clearly done very comprehensively first time round!

To move on to the next phase I think I need to send the full documents of all those assessed as in scope to the FoI unit to make sure they are content, that means getting a copy of documents 5 and 6, I can't see the full docs in the erdm so assuming you weren't sent the originals?

Also I've set out a calendar request for 30 mins tomorrow to chat through a few minor bits and pieces and get your thoughts on the draft response.

Cheers

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Policy Manager | International, EU & UK Relations Team | Scotland House - 5<sup>th</sup> Floor | 58 Victoria Embankment | London | EC4Y 0DS

**Tel:** 0131 244 [REDACTED - section 38(1)(b)]

**Mob:** 07[REDACTED - section 38(1)(b)]

@[ScotGovLondon](#)

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-----Original Message-----

**From:** [REDACTED - section 38(1)(b)]@gov.scot> On Behalf Of Freedom of Information

**Sent:** 13 September 2021 16:23

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]-202100234945 - request for FOI advice

Hi [REDACTED - section 38(1)(b)],

I had a discussion with [REDACTED - section 38(1)(b)] today about this and she said that we should only focus on the dissatisfaction points that the requester raises. So in effect you don't need to re-review the first part of the original request that asks for information on how we determine the application of 29(1) (a) and Public Interest test should be applied. Your review should focus on the second section only ' Secondly, in order to simplify my request, I would like to receive any analysis that the Scottish Government have carried out,

since 2016, which assesses the timeframe which would be required for an Independent Scotland to re-join the EU. '

However, it is possible that the requester could say to us that he would like us to review his first point and we would have to do so, but I assume that this won't happen.

Hope this makes sense.

Even if you decide to uphold the original decision for the review, please still send us the statement of compliance and any information you are proposing to withhold.

[REDACTED - section 38(1)(b)]

---

-----Original Message-----

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 09 September 2021 12:34

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

**Subject:** RE: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]-202100234945 - request for FOI advice

Importance: High

Hi,

Grateful if someone can give me a call to discuss the review request attached. Conscious that time is ticking on and I have a few questions around process.

Many Thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Policy Manager | International, EU & UK Relations Team

| Scotland House - 5th Floor | 58 Victoria Embankment | London | EC4Y 0DS

Tel: 0131 244[REDACTED - section 38(1)(b)]

Mob: 07[REDACTED - section 38(1)(b)]

@ScotGovLondon

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-----Original Message-----

**From:** [REDACTED - section 38(1)(b)]

**Sent:** 07 September 2021 16:47

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

**Subject:** FW: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)] - 202100234945

Hi

Could I set up an quick discussion with a member of the team to discuss the process for review with this rather complex FOI case please?

I understand [REDACTED - section 38(1)(b)] provided the original case handler with some helpful advice when responding to the original.

Look forward to hearing from you.

Many Thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | Policy Manager | International, EU & UK Relations Team  
| Scotland House - 5th Floor | 58 Victoria Embankment | London | EC4Y 0DS  
Tel: 0131 244 [REDACTED - section 38(1)(b)]  
Mob: 07[REDACTED - section 38(1)(b)]  
@ScotGovLondon

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-----Original Message-----

From: [REDACTED - section 38(1)(b)]@gov.scot> On Behalf Of Freedom of Information

Sent: 01 September 2021 09:10

To: Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>

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

Subject: FW: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]-202100234945

Hello Scott,

We have received a request for a review of a response reference 202100227221 issued by [REDACTED - section 38(1)(b)], this review request is set out in the email below.

Can you please allocate the review and confirm who will lead on this case.

In the first instance the reviewer will need to accept the review which has been added to MiCase under reference number 202100234945 and acknowledge receipt using the template response on page 4 of the 'FOI Review templates' PDF available:  
<https://erdm.scotland.gov.uk:8443/documents/qA962816>

The reviewer may want to refer to the guidance available in the 'Sharepoint Collection' PDF via the same link, which includes a step by step guide to reviews (use bookmarks, under Review) in taking this review request forward.

In the usual way the FOI Unit should be asked to clear the review response, before going on to seek the appropriate senior management/Ministerial approval to issue.

Once allocated we will be happy to provide further advice to the reviewer as required.

Regards,  
[REDACTED - section 38(1)(b)]

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-----Original Message-----

From: [REDACTED - section 38(1)(b)]<request-596611-5fac04af@whatdotheyknow.com>

Sent: 30 August 2021 16:16

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

Subject: Internal review of Freedom of Information request - Copenhagen criteria

Dear Scottish Government,

Thank you for your response.

I am sorry, but as expected, I am still not satisfied with your response and would therefore request that response is subject to an internal review.

As we have been over before, the Scottish Government DOES have a policy on EU Membership. This is more than apparent in the attachments in just your last response,

“The Scottish Government has a clear position that membership of the European Union (EU) is in Scotland’s interests”

“the First Minister has stated her strong desire for Scotland to be a full and active member of the European family of nations. The aim of this paper is to provide an initial overview of potential post Brexit routes for Scotland to re-join the EU.”

“As presented in ‘Scotland’s Place in Europe’ the Scottish Government believes that the best option for Scotland is to be an independent member of the EU.”

I have also noted that you have claimed that, “Ministers and officials need to be able to consider all available options and to debate those rigorously, to understand fully their possible implications. Officials’ candour in doing so will be affected by their assessment of whether the discussions on Scotland’s eligibility for and timeframe related to future EU membership will be disclosed in the near future, when it may undermine or constrain the Government’s view on that policy while it is still under discussion and development,” and that “Disclosing the content of free and frank discussions on Scotland’s future membership of the EU will substantially inhibit such discussions now and in the future, particularly because these they are still ongoing and decisions have not been taken, and relate to sensitive issues.”

Yet, strangely, this only seems to relate to the assessment of the timescale I have requested details of and does not seem to prevent the release of any documentation stating that EU membership is in our best interests. Perhaps you could clarify how, if this assessment was to deem that we would be unlikely to meet the criteria for say, several decades due to your policy on currency, if at all, you could still assert that EU membership is in Scotland’s best

interests. I fail to see how you can determine one, and be happy to produce numerous documents stating as such, without the other. At no point in any documentation in relation to the EU have you ever stated that your position is based on any potential timeframe.

I also have numerous issues with the information that you have redacted from your response, as it doesn't seem to relate to your assessment for the formulation of this policy at all. There are numerous sections that are basic explanations of EU processes that have been removed, such as below:

"The *acquis communautaire*, often shortened to *acquis*, consists of the EU's treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice. The EU *acquis* currently consists of 35 chapters, although the number of chapters changes with each membership negotiation. Also known as the Copenhagen Criteria, these chapters have to be successfully opened, negotiated and closed. [REDACTED] [REDACTED] Prior to the 2014 referendum a scoping exercise was conducted to identify what administrative structures would be required in order for an independent Scotland to implement the EU *acquis*. This involved an assessment of the obligations that would accrue from EU membership in respect of areas that are currently reserved (such as regulation of Financial Services) and also devolved areas where there are shared obligations and structures (such as Transport). [REDACTED] [REDACTED]"

Could you clarify on what basis you have decided that this information should not be released.

A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/copenhagen\\_criteria](https://www.whatdotheyknow.com/request/copenhagen_criteria)

Yours faithfully,  
[REDACTED - section 38(1)(b)]

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Please use this email address for all replies to this request: [request-596611-5fac04af@whatdotheyknow.com](mailto:request-596611-5fac04af@whatdotheyknow.com)

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies: <https://www.whatdotheyknow.com/help/officers>

For more detailed guidance on safely disclosing information, read the latest advice from the ICO: <https://www.whatdotheyknow.com/help/ico-guidance-for-authorities>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

From: [REDACTED - section 38(1)(b)]@gov.scot> On Behalf Of Wightman S (Scott)  
Sent: 01 September 2021 09:31  
To: [REDACTED - section 38(1)(b)]@gov.scot>  
Cc: Webster J (John) <[John.Webster@gov.scot](mailto:John.Webster@gov.scot)>; Johnson M (Martin) <[Martin.Johnson@gov.scot](mailto:Martin.Johnson@gov.scot)>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>  
Subject: FOI - EJ - TRIAGE- Copenhagen criteria - [REDACTED - section 38(1)(b)]- 202100234945

Hi [REDACTED - section 38(1)(b)]- Grateful if you could act as case handler for this review, I have assigned it to you on Micase and added to the DEXA tracker so you can keep that up to date.

[REDACTED - section 38(1)(b)] dealt with the original case and I would recommend an early discussion with her and Russell.

Thanks.

[REDACTED - section 38(1)(b)]  
[REDACTED - section 38(1)(b)]  
Business Management Unit  
Directorate for External Affairs  
Scottish Government, Victoria Quay (Area 2H South) Leith, Edinburgh, EH6 6QQ '  
07[REDACTED - section 38(1)(b)]

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**ANNEX C**

**INTERNAL CORRESPONDENCE BETWEEN POLICY AND FOI UNIT STAFF ON  
HANDLING OF SCOTTISH INFORMATION COMMISSIONER APPEAL [STAGE 1] FOR  
CASES 202100227221/202100234945**

*Emails in reverse chronological order.*

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 24 December 2021 08:27  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: Status of Appeals

[REDACTED - section 38(1)(b)]

I hope you have had a lovely Christmas! Thank you for the summary, it was very helpful when trying to get back up to speed!

Thank you and well done for progressing these cases, you will be an appeals expert in no time! J

Thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 20 December 2021 16:53  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** Status of Appeals

[REDACTED - section 38(1)(b)],

I hope you enjoyed your time off. I just thought I would send you the table outlining the progress of ongoing appeals.

Appeal Type	Review reference	Policy area return due	Due with OSIC	Comments
[Redacted – out of	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]

scope. Begins]				
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
Stage 1	202100234945	10/12/21	16/12/21	Sent to OSIC 13.12.2021
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]
[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]	[Redacted – out of scope]

Regards,

[REDACTED - section 38(1)(b)]

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**From:** [REDACTED - section 38(1)(b)]

**Sent:** 10 December 2021 16:00

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** Sunderland RE (Rachel) <Rachel.Sunderland@gov.scot>; Wightman S (Scott) <Scott.Wightman@gov.scot>; Bain R (Russell) <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <foi@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: Scottish Information Commissioner Appeal -MiCase : 202100227221/202100234945 - [REDACTED - section 38(1)(b)]-Action required by 10.12.21

[REDACTED - section 38(1)(b)]

Please find links to the requested documentation relating to [REDACTED - section 38(1)(b)]'s application for a decision by the Information Commissioner.

I have listed the information in this schedule. You'll see that we initially identified 13 documents that may have been relevant to [REDACTED - section 38(1)(b)]'s request. After reviewing these, we decided to withhold six documents in their entirety and partially release seven.

I attach links to all 13 documents below. I have colour coded the redacted information to indicate whether the information was out of scope or an exemption applied. I've saved the schedule and the 13 documents on the eRDM file.

I hope this complies with the Commissioner's request. Happy to discuss further.

Application for decision by SIC (1) - Document 1 - Statement of Compliance for 202100203619

<https://erdm.scotland.gov.uk:8443/documents/A35690839/details>

Application for decision by SIC (2) - Document 2 - Statement of Compliance\_202100195000

<https://erdm.scotland.gov.uk:8443/documents/A35690840/details>

Application for decision by SIC (3) - Document 3

<https://erdm.scotland.gov.uk:8443/documents/A35690844/details>

Application for decision by SIC (4) - Document 4 - Routes summary with exemptions reconsidered

<https://erdm.scotland.gov.uk:8443/documents/A35690845/details>

Application for decision by SIC (5) - Document 5 -Cabinet - [REDACTED – section 30(c)]

<https://erdm.scotland.gov.uk:8443/documents/A35690852/details>

Application for decision by SIC (6) - Document 6 - Constitutional Futures - International - EU Accession - Advice to Ministers - Initial proposal - February 2020

<https://erdm.scotland.gov.uk:8443/documents/A35690850/details>

Application for decision by SIC (7) - Documents 7 - An extract from a draft version of Scotland's place in Europe

<https://erdm.scotland.gov.uk:8443/documents/A35690841/details>

Application for decision by SIC (8) - Document 8

<https://erdm.scotland.gov.uk:8443/documents/A35690842/details>

Application for decision by SIC (9) - Document 9 - Summary of EU accession process  
<https://erdm.scotland.gov.uk:8443/documents/A35690851/details>

Application for decision by SIC (10) - Document x - The proposal and key choices  
<https://erdm.scotland.gov.uk:8443/documents/A35690849/details>

Application for decision by SIC (11) - Document I - EU accession process diagram - December 2019  
<https://erdm.scotland.gov.uk:8443/documents/A35690857/details>

Application for decision by SIC (12) - Document II - Submission - EU Accession process - Commission Communication - 19 February 2020  
<https://erdm.scotland.gov.uk:8443/documents/A35690854/details>

Application for decision by SIC (13) - Document III - Submission - requirements for EU membership - 18 December 2019  
<https://erdm.scotland.gov.uk:8443/documents/A35690858/details>

Kind regards

[REDACTED - section 38(1)(b)]

Team Leader | Citizens' Rights Team | Population and Migration Division | Directorate for External Affairs | Scottish Government | 07[REDACTED - section 38(1)(b)]

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 10 December 2021 12:06

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** Appeals - next week

[REDACTED - section 38(1)(b)]

We has a quick chat about taking forward appeals work whilst I am on leave. The table below sets out all of the live work in this area just now (although [REDACTED - section 38(1)(b)] may also have some ongoing P&E cases) as well as a note of where I think we are with the cases.

Appeal Type	Review reference	Policy area return due	Due with OSIC	Comments
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]

[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
Stage 1	202100234945	10/12/21	16/12/21	Awaiting withheld information from policy team
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]
[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]	[REDACTED – out of scope]

As I said, if you can chase policy teams for responses and see what you can do what you can with the stage 1 cases and if you run into problems I have included an example of requesting an extension from OSIC (in footnote) and we can pick up any issues on my return.

If you can pick up and send on any new cases we receive at stage 1 or 2 that would also be great (I hope it is a quiet week on this front!)

I hope you have a good week.

Cheers

[REDACTED - section 38(1)(b)]

Footnote

With reference to your email below, unfortunately we will not be in a position meet your deadline for providing the withheld information in relation to this case by close of business today.

I can assure you that work is ongoing, but we have not been able to progress this case as we had hoped, which is in part due to the volume of appeals and resources within the FOI Unit being limited as a result of staff absences/vacancies, as well as the pressures of other work. I would be grateful

therefore if you would consider extending your deadline by a week to allow us to respond in full. We will of course aim to provide you with an earlier response if possible.

If it would be helpful to discuss this further, please let me know.

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

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**From:** Penelope Curtis <Penelope.Curtis@gov.scot>

**Sent:** 10 December 2021 10:15

**To:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: Appeals update

Thank you [REDACTED - section 38(1)(b)], this is very helpful and I'm very grateful to you and to other colleagues for your work to manage the glut of appeals – getting the plan in place, and then working through it.

I will speak to [REDACTED - section 38(1)(b)] next week and, as you suggest, keep the discussion in the space of how we're working through the transition "bumps", and I'm sure he'll be accommodating. It builds nicely on a discussion I had with him a couple of weeks ago. [REDACTED – section 30(b)(ii)].

Enjoy your leave.

Penny

Penny Curtis  
Deputy Director Elections and FOI  
Directorate for Constitution and Cabinet  
Scottish Government  
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG  
0131 244 3531 | Mobile 07827 232493

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 10 December 2021 10:06

**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Curtis PS (Penelope) <[Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot)>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** Appeals update

Thanks [REDACTED - section 38(1)(b)]

Penny

Thankfully I have managed to make good progress with a few of the appeals cases over the last couple of days and will coach [REDACTED - section 38(1)(b)] on returning two technical cases this morning so that should take another couple off the list. [REDACTED - section 38(1)(b)] has also managed to protect some of [REDACTED - section 38(1)(b)]'s time next week (from the triage/casework rota) so I am hopeful that she can pick up some or all of the stage

1 (withheld information) cases in my absence. [REDACTED - section 38(1)(b)] has done a couple of these now and [REDACTED - section 38(1)(b)] will be around for support, and if there are any real issues, we can normally secure a week’s extension so I can pick up any learning points with [REDACTED - section 38(1)(b)] when I’m back.

I really appreciate the offer to have a discussion with [REDACTED - section 38(1)(b)]. Rather than a focus on individual cases at this stage it might be beneficial just to highlight the consistently higher volumes of appeals work and the challenges we may face with deadlines as we try to build expertise in this area within the team. [REDACTED - section 38(1)(b)] could perhaps bring this to the attention of the investigating officers in much the same way as he did in the early days of the pandemic when our resources were stretched.

I have set out a summary of our live appeals work below:

Appeal Type	Review reference	Policy area return due	Due with OSIC	Comments
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
Stage 1	202100234945	10/12/21	16/12/21	Awaiting withheld information from policy team
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope

REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope
REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope	REDACTED – Out of scope

As an aside, I thought it may be helpful to have some comparison figures for appeal cases over the last few years (2021 has not been quality assured yet). All years include withdrawn cases mostly where we have negotiated a settlement:

2021 – 72  
2020 - 42  
2019 – 53  
2018 – 45

I hope this helps to inform any discussions.

Thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 08 December 2021 17:33

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** Appeals update

Hi [REDACTED - section 38(1)(b)]

I've had a chat with Penny and she feels strongly that you should not feel that you are shouldering all these appeals on your own. She's comfortable that the Commissioner will cut some slack on the response times required for the appeals and that any organisation with that number of appeals would be struggling to cope. She's happy to have that conversation with him, and as she's already been speaking to him about our transitional challenges, does not anticipate it being a problem.

She is determined that you will go off on holiday and (apart from your highly appreciated offer to join us on Friday) that you can put work aside and get some time out during your break. She's asking if you can pull together a quick, brief overview of the current appeals cases tomorrow (could [REDACTED - section 38(1)(b)] help out?) – literally just a line or two on each one – to give her a sense of what is expected when. She can then have an informed conversation with [REDACTED - section 38(1)(b)] about what we realistically can deliver and to what realistic timetable.

Hope this helps, and just get in touch with me (or her) tomorrow if you have any questions.



Regards

[REDACTED - section 38(1)(b)]

-----  
[REDACTED - section 38(1)(b)] Interim Joint Head of FOI Unit  
-----

Pronouns: she/her | **07**[REDACTED - section 38(1)(b)] | [Yammer: @FOI - Community](#)

My working days are Tues-Fri

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 02 December 2021 16:47

**To:** Wightman S (Scott) <Scott.Wightman@gov.scot>

**Cc:** Sunderland RE (Rachel) <Rachel.Sunderland@gov.scot>; Bain R (Russell) <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <foi@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: Scottish Information Commissioner Appeal -MiCase : 202100227221/202100234945 - [REDACTED - section 38(1)(b)] - Action required by 10.12.21

[REDACTED - section 38(1)(b)], No problem, I can take this forward.

[REDACTED - section 38(1)(b)], if it's all right with you, I'll pop something in your calendar for some advice.

Regards

[REDACTED - section 38(1)(b)]

Team Leader | Citizens' Rights Team | Population and Migration Division | Directorate for External Affairs | Scottish Government | 07464 536 797

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot> **On Behalf Of** Wightman S (Scott)

**Sent:** 02 December 2021 16:07

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** Sunderland RE (Rachel) <Rachel.Sunderland@gov.scot>; Bain R (Russell) <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <foi@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** Scottish Information Commissioner Appeal -MiCase : 202100227221/202100234945 - [REDACTED - section 38(1)(b)]-Action required by 10.12.21

[REDACTED - section 38(1)(b)]– I would be grateful if you could take this forward on Scott's behalf, you will note the deadline of next week for the first action required. I would encourage you to have an early discussion with colleagues in the FOI about what is required here (and I am copying to [REDACTED - section 38(1)(b)] as she has handled one of these before so can offer advice / support).

You will also want to speak to [REDACTED - section 38(1)(b)] and [REDACTED - section 38(1)(b)] who did the initial request and the review. Please keep Scott copied in to the return of information.

Many thanks

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Business Management Unit

Directorate for External Affairs

Scottish Government, Victoria Quay (Area 2H South)

Leith, Edinburgh, EH6 6QQ

07[REDACTED - section 38(1)(b)]

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot> **On Behalf Of** Freedom of Information

**Sent:** 02 December 2021 15:36

**To:** Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>

**Cc:** Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** Scottish Information Commissioner Appeal -MiCase : 202100227221/202100234945 - [REDACTED - section 38(1)(b)] - Action required by 10.12.21

Dear Scott,

cc. for information

The Office of the Scottish Information Commissioner (OSIC) have confirmed that they consider an appeal from the [REDACTED - section 38(1)(b)] to be valid and will now begin their investigations.

You should now consider whether the appeal (particularly that next stage where your Directorate will be asked to provide a detailed justification for withholding the information) should be handled by the person who originally dealt with the request, [REDACTED - section 38(1)(b)] or whether it is better for someone else to lead at this time. Please could you therefore confirm who will be leading on the appeal.

At this stage, we must forward any withheld information to OSIC. I enclose OSIC's schedule spreadsheet which will assist in the identification of each document containing relevant information and the exemptions/exceptions that have been applied. The appointed officer should include in the schedule information that may have already been released to the requester at earlier stages of this process (although previously released information does not require to be sent to OSIC). If some of the information in a document is out of scope of the request please ensure this is made clear in the schedule.

Please ensure the schedule has been completed and that the withheld documents have been numbered accordingly. If any documents have been partially released with redactions you must provide a copy of the clean original version, which clearly shows which

exemptions/exceptions have been applied to which parts of the document (it can be helpful to use a different colour highlighting for each exemption to demonstrate this). Further guidance from OSIC on how to complete the schedule and provide the withheld information is attached. The schedule and withheld information can be forwarded to me electronically or a link passed to me with the copies saved in the eRDM case file at: 202100234945 - Objective ECM (scotland.gov.uk)

The FOI Unit will forward on all this information to OSIC. We have been given until 16 December 2021 to respond. In order for me to review and confirm the information is as identified, please arrange for a response to be provided to me by **10 December 2021**.

Please feel free to call if you would find it helpful to discuss any of the above.

Regards,

[REDACTED - section 38(1)(b)]

---

**From:** [REDACTED - section 38(1)(b)]@itspublicknowledge.info>

**Sent:** 02 December 2021 12:26

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

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

**Subject:** Notification of a new application for a Decision by the Scottish Information Commissioner - Withheld information request - 2202101494

Our Ref: 202101494

Your Ref: 202100227221

Dear [REDACTED - section 38(1)(b)]

**Application for Decision by the Scottish Information Commissioner**

**Applicant:** [REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] has applied to the Scottish Information Commissioner for a decision. He is dissatisfied with the way in which the Scottish Ministers (the Ministers) handled his request for information. I attach a copy of [REDACTED - section 38(1)(b)]'s application to the Commissioner for your information. Please note that this application is dated 1 October but was received today, 2 December 2021.

The application appears to be valid for the purposes of section 47 of the Freedom of Information (Scotland) Act 2002. This means the Commissioner is required to investigate your authority's handling of the request.

**The information withheld from applicant**

To begin the investigation, we need you to give us the information withheld from [REDACTED - section 38(1)(b)].

Along with the information, you must give us a schedule listing the information you are sending. This should be in the same form as the attached pro forma schedule.

Please read the guidance attached to this email before giving us the information and before completing the schedule. **We have recently changed the way we ask for information to be provided, so it is important you read the new guidance.** If the schedule is not completed properly and in full, or the information is not sent to us in the correct form, it will be returned to you for you to resubmit them in the correct form.

At the end of the case, we usually delete the information we hold in electronic form, and destroy any hard copies supplied by the public authority. If you would prefer the information to be returned to you at the end of the investigation, let us know. If you have not asked us to return the information to you within three months from the date of the Commissioner's decision (or within three months of us advising you that a decision is no longer required), it will be destroyed, unless an appeal is subsequently made to the Court of Session, in which case the information will be retained pending the outcome of the appeal. The electronic copy of the information you send will be deleted from the case file at the same time.

More information about what we do with any personal data you provide to us for the purposes of an investigation can be found on our privacy notice:

[www.itspublicknowledge.info/home/privacy.aspx](http://www.itspublicknowledge.info/home/privacy.aspx).

Please let us have the information asked for by **Thursday 16 December 2021**.

If you have any queries about the way the schedule should be completed or the way the information should be provided, please contact [REDACTED - section 38(1)(b)]@itspublicknowledge.info).

#### **Next steps**

Once we have received and checked the information, the case will be allocated to an investigating officer. The investigating officer will contact you and seek your comments on the application. This will be your opportunity to provide detailed submissions on your authority's handling of the request.

At this stage, the Ministers may wish to reconsider their position in relation to the withheld information. If there are no longer reasons for withholding the information, the Ministers may now wish to consider disclosing it to the applicant – if so, the applicant may consider withdrawing the application and an investigation may not be needed. Please contact me if this is a possibility.

The Commissioner has issued guidance for authorities on what to expect during an investigation. I recommend you read the guidance before responding to this letter. The guidance is available on our website:

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8370&SID=105>.

Please note, in particular, the section on exemptions/exceptions and the standard of submissions required by the Commissioner.

If you have any queries about the investigation (other than about how the schedule should be completed or how the information should be provided), please contact me.

Yours sincerely

[REDACTED - section 38(1)(b)]

**Validation Officer**

---

**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

Fax: 01334 [REDACTED - section 38(1)(b)]

Email: [REDACTED - section 38(1)(b)]@itspublicknowledge.info

Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

Scottish Information Commissioner   
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**ANNEX D**

**INTERNAL CORRESPONDENCE BETWEEN POLICY AND FOI UNIT STAFF ON  
HANDLING OF SCOTTISH INFORMATION COMMISSIONER APPEAL [STAGE 2] FOR  
CASES 202100227221/202100234945**

*Emails in reverse chronological order.*

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot> **On Behalf Of** Freedom of Information  
**Sent:** 05 July 2023 15:24  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** Rachel Sunderland <Rachel.Sunderland@gov.scot>; Russell Bain <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Scott Wightman <Scott.Wightman@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Lorna Gibbs <Lorna.Gibbs@gov.scot>  
**Subject:** FW: Case 202101494 - [REDACTED - section 38(1)(b)] and Scottish Ministers - 202100234945

[REDACTED - section 38(1)(b)]/ [REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)] who is on leave until 17 July lead on this appeal, but if I recall you were both involved in the case at various stages (or maybe a related case, it was a long time ago) and I wanted to let the policy area know we have now received a decision in relation to [REDACTED - section 38(1)(b)]'s request.

As you will see, OSIC have only partially found in our favour and have ordered us to disclose some of the information previously withheld under exemptions and some of the information we argued was out of scope. [REDACTED - section 36(1)]. I've attached a link to the request for submissions and the submissions we have made for background in the footnote to this email.

I will also send a short submission to Ministers for awareness, but I am off on leave until Monday, if you think anyone else should be aware at this stage, please do pass this on.

[REDACTED - section 36(1)]

[REDACTED - section 38(1)(b)] (copied) will be around for any questions tomorrow, or I can pick this back up on Monday if it would be helpful to discuss.

Kind regards

[REDACTED - section 38(1)(b)]

Appeal - Stage 2 - 202100234945 - Submission to OSIC - 09.06.22  
<https://erdm.scotland.gov.uk/documents/A38488517/details>

Appeal-Stage 2- 202100234945-Submissions request from OSIC-03.05.22  
<https://erdm.scotland.gov.uk/documents/A37806924/details>

**From:** [REDACTED - section 38(1)(b)]@itspublicknowledge.info <[REDACTED - section 38(1)(b)]@itspublicknowledge.info>  
**Sent:** Monday, July 3, 2023 1:09 PM  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** [REDACTED - section 38(1)(b)]@itspublicknowledge.info  
**Subject:** Case 202101494 - [REDACTED - section 38(1)(b)] and Scottish Ministers

[REDACTED - section 38(1)(b)]

I attach a copy of Decision 065/2023, relating to the above case, together with the covering letter to the Permanent Secretary and a copy of the withheld information marked up for disclosure. Please acknowledge safe receipt to the case officer, [REDACTED - section 38(1)(b)].

[REDACTED - section 38(1)(b)]

**Deputy Head of Enforcement**

Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
KY16 9DS

Phone: 01334 [REDACTED - section 38(1)(b)]  
Fax: 01334 [REDACTED - section 38(1)(b)]  
E-mail: [REDACTED - section 38(1)(b)]@itspublicknowledge.info  
[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

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---

**From:** [REDACTED - section 38(1)(b)] **On Behalf Of** Freedom of Information  
**Sent:** 07 June 2022 12:05  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <foi@gov.scot>  
**Cc:** Sunderland RE (Rachel) <Rachel.Sunderland@gov.scot>; Bain R (Russell) <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <Scott.Wightman@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

Hi [REDACTED - section 38(1)(b)]

Thank you for providing comments in relation to this appeal case and apologies for only just being in a position to turn to this now. Unfortunately we have had some resourcing issues within the Unit so have had to seek extensions from OSIC to allow us to finalise our response.

I have drafted our submissions, largely based on your comments. There are a couple of minor points to clarify in relation to the information, which I still need your help to finalise – I have added comments at the relevant sections. For ease of reference I have also included a link to the withheld information in the footnote to this email.

[REDACTED – section 30(c)]

Can you also confirm you are content with the submission as drafted?

We are required to respond to OSIC by 13 June 2022 however I am on leave from lunchtime on Friday. If you could provide any final comments by COP **Thursday 9 June 2022** that would be greatly appreciated.

Happy to discuss as required.

Kind regards

[REDACTED - section 38(1)(b)]

#### Footnote

[REDACTED – section 30(c)]

[REDACTED - section 38(1)(b)] | FOI Manager | Freedom of Information Unit | Scottish Government | 2W | St Andrews House | Regent Road | Edinburgh | EH1 3DG

I am currently working from home due to the COVID-19 restrictions - please contact me via email or Skype for business.

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 10 May 2022 16:47

**To:** [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>

**Cc:** Sunderland RE (Rachel) <[Rachel.Sunderland@gov.scot](mailto:Rachel.Sunderland@gov.scot)>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>

**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

And copying the FOI unit inbox...

[REDACTED - section 38(1)(b)]



**From:** [REDACTED - section 38(1)(b)]  
**Sent:** 10 May 2022 16:46  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** Sunderland RE (Rachel) <[Rachel.Sunderland@gov.scot](mailto:Rachel.Sunderland@gov.scot)>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot[REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

Dear [REDACTED - section 38(1)(b)]

I'm sending this reply to you rather than [REDACTED - section 38(1)(b)] as she's on leave.

We have carefully reviewed this case, paying particular attention to the exemptions and out-of-scope material, and have given detailed responses to the Commissioner's questions in this [REDACTED - section 30(c)]. You'll see we have clarified which information is being withheld and why the exemptions apply. We've also explained why some of the information is out of scope. [REDACTED - section 38(1)(b)] requested information about our analysis of timeframes for an independent Scotland to join the EU. [REDACTED - section 30(c)]. The statement regarding the original searches is [here](#). A couple of the Commissioner's questions are unclear and we've highlighted these in comments. I hope our notes are helpful. If not, I'm more than happy to discuss them with you.

Best wishes

[REDACTED - section 38(1)(b)]

Team Leader | Citizens' Rights Team | Population and Migration Division | Directorate for External Affairs | Scottish Government | 07[REDACTED - section 38(1)(b)]

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 10 May 2022 12:24  
**To:** Russell Bain <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

Colleagues

I've tidied up our response to the Commissioner's questions in light of Russell's comments. I'll forward the document to [REDACTED - section 38(1)(b)] in the FOI unit later today. If you have any further comments please add them to the document before 4pm. Many thanks.

Regards

[REDACTED - section 38(1)(b)]

**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 08 May 2022 11:34  
**To:** Russell Bain <Russell.Bain@gov.scot>  
**Cc:** Rachel Sunderland <Rachel.Sunderland@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Scott Wightman <Scott.Wightman@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

Russell

Please find a link to the Commissioner's letter on the FOI appeal. I've replied to the questions with [REDACTED - section 38(1)(b)] help but here are some where we'll need your input. See the comments boxes.

[REDACTED – section 30(c)]

I'm tied up all day Monday but will be able to work again on this on Tuesday before it goes back to our FOI colleagues by close of play.

Best wishes

[REDACTED - section 38(1)(b)]

Team Leader | Citizens' Rights Team | Population and Migration Division | Directorate for External Affairs | Scottish Government | 07[REDACTED - section 38(1)(b)]

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>  
**Sent:** 04 May 2022 12:48  
**To:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>  
**Cc:** Rachel Sunderland <Rachel.Sunderland@gov.scot>; Russell Bain <Russell.Bain@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Scott Wightman <Scott.Wightman@gov.scot>  
**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

[REDACTED - section 38(1)(b)],

Great, thanks so much. Please add your initial thoughts and responses to Commissioner's questions here. Let's catch up on Friday.

[REDACTED - section 38(1)(b)]

Team Leader | Citizens' Rights Team | Population and Migration Division | Directorate for External Affairs | Scottish Government | 07[REDACTED - section 38(1)(b)]

---

**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 04 May 2022 12:29

**To:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** Sunderland RE (Rachel) <[Rachel.Sunderland@gov.scot](mailto:Rachel.Sunderland@gov.scot)>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>

**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

[REDACTED - section 38(1)(b)]- we spoke briefly on a call just now. I said I would come back with some notes once I've retrieved the case information and refreshed my memory of it and can provide notes against some of the IC's questions. It'll likely be Friday PM before I can get this over to you.

[REDACTED - section 38(1)(b)]

[REDACTED - section 38(1)(b)]

Multilateralism and Representation

Directorate for External Affairs | Scottish Government

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**From:** [REDACTED - section 38(1)(b)]@gov.scot>

**Sent:** 03 May 2022 17:20

**To:** [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** Sunderland RE (Rachel) <[Rachel.Sunderland@gov.scot](mailto:Rachel.Sunderland@gov.scot)>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>

**Subject:** RE: Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

[REDACTED - section 38(1)(b)] and [REDACTED - section 38(1)(b)]

You worked on earlier stages of this FOI. Are you able to help me with the OSIC's questions? In particular, we need to be clear about the reasons for applying the exemptions and declaring some documents to be out of scope. If you're able to remind yourselves of the details of this case, I'll set up a Teams meeting later this week to discuss. Thanks.

Regards

[REDACTED - section 38(1)(b)]

Team Leader | Citizens' Rights Team | Population and Migration Division | Directorate for External Affairs | Scottish Government | 07[REDACTED - section 38(1)(b)]

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**From:** [REDACTED - section 38(1)(b)]@gov.scot> **On Behalf Of** Freedom of Information

**Sent:** 03 May 2022 16:27

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** Sunderland RE (Rachel) <[Rachel.Sunderland@gov.scot](mailto:Rachel.Sunderland@gov.scot)>; Bain R (Russell) <[Russell.Bain@gov.scot](mailto:Russell.Bain@gov.scot)>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>; [REDACTED - section 38(1)(b)]@gov.scot>

38(1)(b)]@gov.scot>; Wightman S (Scott) <[Scott.Wightman@gov.scot](mailto:Scott.Wightman@gov.scot)>; Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>

**Subject:** Appeal-Stage 2- Submissions- Request for comments-202100227221/202100234945

Dear [REDACTED - section 38(1)(b)],

We have now received a request from the Office of the Scottish Information Commissioner (OSIC) (see attached) inviting us to comment on this case. They have asked some specific questions for which I will need your assistance.

This is our opportunity to reassess the original response to this request and allows us to make amendments, particularly if the circumstances have changed. This is the second appeal that concerns this request and the previous correspondence on this can be found here : 202100234945 - Objective ECM ([scotland.gov.uk](http://scotland.gov.uk))

The FOI Unit will draft and issue the response to the Commissioner but I will require input from the policy area. We will prepare a draft shortly, but will need you to provide some background and help with answering some questions and check our draft responses.

Next Steps :

- For exemptions 29(1)(a), 30(b)(i) and (ii), can you take a look at the schedule and withheld information that was sent to OSIC and ensure that the redactions they have mentioned are accurate? In particular, they have highlighted issues with document 4 that need clarification. I have included the schedule and withheld information sent to OSIC at Stage 1 for your reference.
- Can you provide comments on the questions set out by OSIC regarding the withheld information and searches.
- For the questions on out of scope information, can you set out detailed reasoning why each piece of information is considered to be out of scope and provide comments on the questions asked by OSIC on this.

We have been given until **17 May 2022** to respond in full and would appreciate if you could provide comments on the information outlined in the letter attached by **10 May 2022**.

Please feel free to call if you would find it helpful to discuss any of the above.

Kind Regards,  
[REDACTED - section 38(1)(b)]

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**From:** [REDACTED - section 38(1)(b)]@itstopublicknowledge.info>

**Sent:** 03 May 2022 10:17

**To:** [REDACTED - section 38(1)(b)]@gov.scot>

**Cc:** [REDACTED - section 38(1)(b)]@gov.scot>; Freedom of Information <[foi@gov.scot](mailto:foi@gov.scot)>

**Subject:** Application from [REDACTED - section 38(1)(b)]

Our Ref: 202101494

Your Ref: 202100227221

Dear Ms [REDACTED - section 38(1)(b)],

Please see the attached letter which is seeking the Ministers' comments on the application from [REDACTED - section 38(1)(b)].

Please note that a response is required by **17 May 2022**.

If you have any questions about the attached letter, or the case in general, please do not hesitate to get in touch.

[REDACTED - section 38(1)(b)]  
**Freedom of Information Officer  
Investigator**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

Email: [REDACTED - section 38(1)(b)]@itspublicknowledge.info

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