

1.

From: [redacted]
Sent: 11 September 2020 09:24
To: [redacted@gov.scot]
Subject: RE: 202000077818 - FOI Due 17/09

Yep and especially because SpAds will be all over it! I've copied you in to the e-mail that I sent to Judith and depending on when she replies, I might need to leave some things with you for Monday. But we can catch up about that later today. ☺

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

From: [redacted]
Sent: 11 September 2020 09:03
To: [redacted]

Subject: RE: 202000077818 - FOI Due 17/09

Thanks [redacted], here's hoping we get it back quickly!

[redacted]

[redacted] People Advice and Wellbeing Team | E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD |
Supporting the People Strategy by improving online guidance
HR Help can help if you can't find what you need on saltire - 0131 244 8500

From: [redacted@gov.scot]
Sent: 11 September 2020 08:57
To: [redacted@gov.scot] [redacted@gov.scot]
Cc: Mackinnon J (Judith) [redacted@gov.scot] [redacted@gov.scot]

Subject: RE: 202000077818 - FOI Due 17/09

Hi [redacted]

I've just send a draft reply to [Judith](#) for clearance.

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

From: [redacted@gov.scot]

Sent: 10 September 2020 14:56

To: [redacted@gov.scot]

Cc: [Mackinnon J \(Judith\)](#) [redacted@gov.scot] [redacted@gov.scot] [redacted@gov.scot]

Subject: FW: 202000077818 - FOI Due 17/09

Hi [redacted]

[redacted] is on leave, can you advise me on the progress of this FOI which is due next Thursday?

Thanks

[redacted]

From: [redacted@gov.scot]

Sent: 08 September 2020 15:52

To: [redacted@gov.scot]

Cc: [redacted@gov.scot] [redacted@gov.scot]

Subject: RE: 202000077818 - FOI Due 17/09

Hi [redacted]

The FOI has been drafted with what I can, however I'm waiting on lines from [redacted]. It will be discussed tomorrow at our FOI catch-up.

Thanks,
[redacted]

From: [redacted@gov.scot]
Sent: 08 September 2020 12:38
To: [redacted@gov.scot]
Cc: [redacted@gov.scot] [redacted@gov.scot]
Subject: 202000077818 - FOI Due 17/09

Hi [redacted]

Just looking for an update on the progress of the above FOI that is due next week?

Thanks,

[redacted] Business Support & Events Officer| People Directorate, Scottish Government| Tel: [redacted]
HR Help can help if you can't find what you need on Saltire - 0131 244 8500

2.

From: [redacted]
Sent: 09 September 2020 19:48
To: [[redacted@gov.scot]
Subject: URGENT - FOI for comment - [redacted]- harassment complaints
Importance: High

Hi [redacted]

Here is the draft reply to the [redacted] FOI. [redacted] I've not seen the documents relating to the investigation [redacted]

The response to questions 1, 3 and 3a are straightforward (I think!).

In questions 2 and 2a, the requester asks for:

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

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

[redacted] sent me a previous FOI reply (attached) which had asked for 'any and all information held by the Scottish Government on its investigation into former First Minister Alex Salmond over claims of sexual impropriety. The documents I would like to request should include, but not be limited to, minutes of meetings, emails and official reports'. Various exemptions were applied to that request, [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

3.

From: Mackinnon J (Judith) [redacted@gov.scot]

Sent: 17 September 2020 09:40

To: [redacted@gov.scot]

Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

[redacted] – did you get me follow up email yesterday with confirmation from [redacted]? Today is deadline for issue – are we going to make it?

Judith

From: [redacted@gov.scot]

Sent: 16 September 2020 20:17

To: Mackinnon J (Judith)

Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Thanks Judith.

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

From: Mackinnon J (Judith) [redacted@gov.scot]

Sent: 16 September 2020 11:26

To: [redacted@gov.scot]

Cc: [redacted@gov.scot] [redacted@gov.scot]

Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Thanks for this [redacted]

Helpful position to get to re the exemption – makes sense.

On the meetings with complainers at the outcome of the investigation – [redacted] is checking with [redacted] as there are some docs – and [redacted] will review (probably on our behalf – rather than let us see them).

Have reminded him we are up against the clock.

Judith

4.

From: [redacted]

Sent: 09 September 2020 15:51

To: [redacted@gov.scot]

Subject: RE: 202000077818 - FOI Due 17/09

202000077818 - FOI
- Harassment Complaints – [redacted] -09 September 2020.docx

Hi [redacted]

See draft attached.

Hope this is okay,

[redacted]

[redacted] People Advice and Wellbeing Team | E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD |
Supporting the People Strategy by improving online guidance

From: [redacted]

Sent: 08 September 2020 19:33

To: [redacted]

Subject: RE: 202000077818 - FOI Due 17/09

Thanks [redacted] Could you add the following in to the text of your reply:

Question 1

In your request, you have asked for information about the date, nature of allegation and the name of the person alleged to have harassed someone for each complaint dealt with using this procedure. Information about harassment complaints is already available – see Parliamentary Question S5W-18396 published on Thursday 20 September 2018.

Since Thursday 20 September 2018 to 19 August 2020 (ie the date of your request) there have been no further complaints of harassment involving current or former Ministers.

Question 2 and 2a

Information about the complaints referred to above is already available – see [where]

Question 3 and 3a

The process for dealing with formal complaints of harassment involving current or former Ministers has not been used since the judicial review in 2018. This is because there have been no complaints of harassment involving current or former Ministers since that date.

I'll let you know when I get some info for the see [where] bit!

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

5.

[redacted] – skype refers

From: [redacted]

Sent: 18 October 2020 19:29

To: [redacted]

Subject: FOI reviewFrom Subject Received Size Categories In Folder

Hi [redacted]

In case helpful for your FOI review, attached is information provided by [redacted] re info. in scope/out of scope.

I've gone through the whole erdm file Project S ([Judith](#) has access in case you don't – link attached) and this excel spreadsheet refers to any relevant docs, there is very little.

[redacted] and I talked through the exemptions in order to inform the final FOI response, depending on the advice re the undertaking you may wish to consider whether a double-check with Nicky and Perm Sec is required to extend the 'search' to see if they hold anything in addition that would be in scope of 2 and 2(a). To my knowledge all related info was submitted to OCT though.

Give me a shout if you need to chat through next week, I'm also at home Monday and Friday late if I need to hop onto the laptop.

Thanks

[redacted] People Advice and Wellbeing Team Leader | Tel: [redacted]
I work flexibly across locations, normally in Saughton

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Embedded email 1

Hi [redacted]

I've spoken to [redacted] about the attached and we think the exemptions look right but before sending to Spads agreed we should check in with you. Can we get 5 mins please?

Thanks

[redacted]

From: [redacted]

Sent: 17 September 2020 09:46

To: [redacted@gov.scot]

Subject: FW: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Importance: High

FOI - 202000077818

- Harassment Complaints - [redacted] 09 September 2020.docx

From: [redacted@gov.scot]

Sent: 16 September 2020 20:34

To: [redacted@gov.scot]

Subject: Re: URGENT - FOI for clearance/comment - [redacted]- harassment complaints

Hi [redacted]

Could I ask a favour please. I'm possibly being thick but I'm not clear if [redacted] reply is confirming that all the exemptions in the draft are ok to stay – or if there are only 2 documents in scope and only the S35(1)(g) applies. If it is the latter the draft will need to be updated to remove all the other exemptions.

Could you possibly check this with [redacted] tomorrow. Once we're happy that the draft is accurate, [redacted] will send it to SpAds for clearance.

Hope this makes sense but if it doesn't, just give me a phone.

Thank you!
[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

From: Mackinnon J (Judith) [redacted@gov.scot]
Sent: 16 September 2020 15:24
To: [redacted@gov.scot] [redacted@gov.scot]
Cc: [redacted@gov.scot]
Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Thanks [redacted] – bringing in [redacted] so that she can finalise the response.

[redacted] – if you need anything please – can you let me know?

Thanks

Judith

From: [redacted@gov.scot]
Sent: 16 September 2020 15:22
To: Mackinnon J (Judith) [redacted@gov.scot]
Cc: [redacted@gov.scot]
Subject: RE: URGENT - FOI for clearance/comment - [redacted]- harassment complaints

Hi Judith,

To confirm that I have considered the documents we have relating to the outcome of the investigation around the Decision Report. One document relates to a telephone call and so would be out of scope of this request and the other would be covered by the S35(1)(g) exemption – prejudice to a public authority in the exercise of its functions, in line with the content in the draft response. I hope that is helpful.

Many thanks

[redacted]

Organisational Continuity Team
1W St Andrews House
Edinburgh
EH1 3DG
BB: [redacted]
Email: [redacted]

I am working from home for the foreseeable future and so email or blackberry are the best means of contact.

From: Mackinnon J (Judith) [redacted@gov.scot]
Sent: 16 September 2020 15:13
To: [redacted@gov.scot]
Subject: FW: URGENT - FOI for clearance/comment - [redacted]- harassment complaints

[redacted]

Can you confirm the documents highlighted below you have checked and whether they are in scope and if they are, are they covered by the exemptions?

Thanks

Judith

[redacted]

From: [redacted@gov.scot]
Sent: 15 September 2020 19:01
To: Mackinnon J (Judith) [redacted@gov.scot]
Cc: [redacted@gov.scot] [redacted@gov.scot]
Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Hi Judith

[redacted]

Before finalising the reply, we need to review all the documents within scope to ensure all the exemptions actually relate to specific documents. [redacted]

[redacted]

I haven't seen and don't have access to any of the documents relating to the investigation or the work that followed. I'm not sure who has seen the documents but was wondering if this was possibly something which [redacted] could check?

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

From: [redacted]
Sent: 11 September 2020 10:15
To: Mackinnon J (Judith) [redacted@gov.scot]
Cc: [redacted@gov.scot] [redacted@gov.scot] [redacted@gov.scot]
Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Thanks Judith – that's really helpful. [redacted]

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

From: Mackinnon J (Judith) [redacted@gov.scot]

Sent: 11 September 2020 10:07

To: [redacted@gov.scot]

Cc: [redacted@gov.scot] [redacted@gov.scot] [redacted@gov.scot]

Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Hi [redacted]

[redacted]

I would double check with [redacted]

[redacted]

Judith

From: [redacted@gov.scot]

Sent: 11 September 2020 08:56

To: Mackinnon J (Judith) [redacted@gov.scot]

Cc: [redacted@gov.scot] [redacted@gov.scot] [redacted@gov.scot]

Subject: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Importance: High

Hi Judith

Please find attached a draft reply to the [redacted] FOI about harassment complaints involving former and current Ministers. The reply is due on Thursday (17th).

[redacted] has seen the draft and is Dup but because we're not familiar with the events following the FFM investigation, there may be some bits in the reply that don't apply or are wrong.

[redacted] has asked 5 questions. The responses to questions 1, 3 and 3a are straightforward.

In questions 2 and 2a, he asks for:

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

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

[redacted] from OCT sent me a previous FOI reply (attached) which had asked for 'any and all information held by the Scottish Government on its investigation into former First Minister Alex Salmond over claims of sexual impropriety. The documents I would like to request should include, but not be limited to, minutes of meetings, emails and official reports'. [redacted]

[redacted]

[redacted]

Sorry that there are still so many questions about the draft but hopefully it won't need too much more work. I've also copied in [redacted] for any thoughts given her knowledge of the Committee documents.

Many thanks.

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations

I am working from home and can be contacted by e-mail, skype or on [redacted]

Embedded email Hi **Judith**,

To confirm that I have considered the documents we have relating to the outcome of the investigation around the Decision Report.
[redacted]

I hope that is helpful.

Many thanks

[redacted]

Organisational Continuity Team
1W St Andrews House
Edinburgh
EH1 3DG
BB: [redacted]
Email: [redacted]

From: Mackinnon J (Judith) [redacted@gov.scot]

Sent: 16 September 2020 15:13

To: [redacted@gov.scot]

Subject: FW: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

[redacted]

Can you confirm the documents highlighted below you have checked and whether they are in scope and if they are, are they covered by the exemptions?

Thanks

Judith

From: [redacted@gov.scot]
Sent: 15 September 2020 19:01
To: Mackinnon J (Judith) [redacted@gov.scot]
Cc: [redacted@gov.scot] [redacted@gov.scot]
Subject: RE: URGENT - FOI for clearance/comment - [redacted] - harassment complaints

Hi Judith

I've spoken to [redacted] and [redacted]. I've amended the draft to reflect this.

Before finalising the reply, we need to review all the documents within scope to ensure all the exemptions actually relate to specific documents. [redacted]

[redacted]

I haven't seen and don't have access to any of the documents relating to the investigation or the work that followed. I'm not sure who has seen the documents but was wondering if this was possibly something which [redacted] could check?

[redacted]

[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

6.

From: [redacted]
Sent: 26 October 2020 17:35
To: [redacted@gov.scot] [redacted@gov.scot] [redacted@gov.scot]
Cc: [redacted@gov.scot] [redacted@gov.scot] [redacted@gov.scot]
Subject: RE: Your recent correspondence with Scottish Government and partner agencies – 202000077818

Thank you [redacted]. This is helpful. We might also want to bring [redacted] into the discussion in terms of what the undertaking does and does not apply to.

I will arrange for a holding response to be issued.

[redacted]

From: [redacted]

Sent: 26 October 2020 17:31

To: [redacted] [redacted] [redacted]

Cc: [redacted] [redacted] [redacted]

Subject: RE: Your recent correspondence with Scottish Government and partner agencies – 202000077818

[redacted]

I do not think this is particularly straightforward. On a purely practical level, do you know if the original casehandler ([redacted]) spoke to the FOI Unit before issuing the original response? I can't find a schedule of compliance either in MiCase or in eRDM, so I do not know a) what information we hold that is within scope and b) what exemptions have been applied to what information. On the face of it, we have applied no fewer than six exemptions in relation to questions 2 and 2(a), some of which are relatively rarely encountered.

As I understand it, [redacted] has been obtained in relation to a different case concerning the investigation of complaints against the former First Minister which is presently on appeal to the Commissioner. Your case is only currently at review stage. [redacted]

[redacted]

[redacted]

However, it is not clear to me that there would be any basis for applying section 26(c) more widely. The essence of the exemption is that disclosure would constitute, or otherwise be punishable as, a contempt of court. It is a relatively rare exemption and our experience is that the Commissioner expects to see the order that we would be breaching if we disclosed, and the information covered by the order. I expect the Commissioner would take the view that court orders (and indeed undertakings) are framed with precision and therefore mean what they say. If we are going to argue something different, that would be a novel argument and I would be doubtful about his willingness to take an expansive approach.

Without knowing what other information (aside from that affected by the undertaking) you have that is within scope, it is difficult to comment on whether the other exemptions are correctly applied or not. What I can say is that the Commissioner does not favour the over-application of exemptions, and has

commented negatively on a number of previous occasions where we have applied numerous exemptions unless we can clearly identify which exemption is being applied to the specific information in question, so seeing the schedule will be important here.

On a further practical point, all review responses are supposed to be cleared by the FOI Unit before issue. An appeal to the Commissioner in this case seems likely, so it would be as well for the review response to be as defensible as possible, as this is our last chance to get the decision watertight before it goes to the Commissioner. I think it is unlikely that we can get this over the line tonight, so it might be best to issue a holding response to the requester. A template is available at page 6 [here](#). Perhaps we could then have a catch-up tomorrow with [redacted] too? Happy to discuss.

[redacted]

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

M: [redacted]

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

7.

From: [redacted]

Sent: 13 October 2020 14:25

To: [redacted@gov.scot]

Cc: [redacted@gov.scot]

Subject: FW: Your recent correspondence with Scottish Government and partner agencies – 202000077818

Hi [redacted]

I have been asked to carry out this FOI review. In terms of the issues being raised about q2 and q2a and the exemptions applied, is there not a more fundamental point that could be used in response. That is that there are no outcomes or “official report” as these were essentially reduced by the outcome of the judicial review?

[redacted]

From: [redacted]

Sent: 12 October 2020 10:37

To: [redacted] [redacted]

Subject: FW: Your recent correspondence with Scottish Government and partner agencies – 202000077818

Both FOI review below.

[redacted] Business Support & Events Officer| People Directorate, Scottish Government
HR Help can help if you can't find what you need on Saltire - 0131 244 8500

From: Richards N (Nicola) On Behalf Of Head of HR Mailbox
Sent: 02 October 2020 13:07
To: [redacted]
Subject: FW: Your recent correspondence with Scottish Government and partner agencies – 202000077818

From: [redacted]@jpress.co.uk>
Sent: 28 September 2020 17:18

To: Head of HR Mailbox <HeadofHR@gov.scot>
Subject: Re: Your recent correspondence with Scottish Government and partner agencies - 202000077818

Dear Ms Richards,

I am writing to you to request an internal review of this decision.

I would argue the exemptions listed for not releasing the information in questions 2 and 2a have been applied incorrectly. I would argue that the exemptions applied in the response such as the contempt of court or the personal data exemptions can be overcome through adequate redactions rather than a blanket exemption. The Scottish Government is required to presume in favour of disclosure, and without considering redaction as a potential alternative those exemptions have been applied erroneously.

I would also argue the other examples, all subject to the public interest test, have been applied incorrectly due to the clear, obvious and overwhelming public interest in the harassment complaints procedure. There is an ongoing parliamentary inquiry into the issue and the trial around Alex Salmond and the judicial review action surrounding the procedure all arguably have the property of being issues considered to have the highest public interest. There is a substantial appeal to transparency and accountability which is ignored in this response and should be applied correctly and given the weight it requires, which I believe would outweigh the reservations outlined.

Best wishes,
[redacted]

On Thu, 17 Sep 2020 at 22:31, <casehandling.service@gov.scot> wrote:
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 destroy the email, remove any copies from your system and inform the sender immediately by return.

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.

Best wishes,

[redacted]

Politics Reporter
The Scotsman

Phone: [redacted]
Mobile: [redacted]

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From: [redacted]
Sent: 05 October 2020 12:08
To: [redacted]
Subject: [redacted] FOI

Hi [redacted] this is the one, I think it issued by [redacted]?

FOI - 202000077818

- Harassment Complaints - [redacted] -17 September 2020 (008).docx

[redacted]

From: [redacted@gov.scot]
Sent: 02 October 2020 11:14
To: [redacted@gov.scot]
Subject: [redacted] FOI

Hello. Just updating our e-RDM file with all the recent FOIs. I don't have a copy of the final reply that went to [redacted]. Do you still have a copy of what was issued to him?

Thanks.

[redacted]
[redacted] People Advice and Wellbeing Team | People Advice | Directorate for People | DG Organisational Development and Operations
I am working from home and can be contacted by e-mail, skype or on [redacted]

I would be grateful if you could request clearance from DFM for this FOI due today.

My sincere apologies in requesting this so late, there were a couple of documents that required follow up review with regards to the exemptions in place.

This has been cleared by Colin McAllister.

Many thanks

[redacted]

Head of the People Advice and Wellbeing Team | Tel: [redacted]
I work flexibly across locations, normally in Saughton
Supporting the People Strategy by improving online guidance
HR Help can help if you can't find what you need on saltire - 0131 244 8500

If you receive this email late at night, early in the morning, or at the weekend - it means I am working flexibly given the current circumstances. This works for me but please do not feel that you should have to pick this up outside of your own normal working hours.