

THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

REFUSAL NOTICE

Request Number: 2022-671105

Date: 24 February 2022

This refusal notice is provided in accordance with section 16 of the Freedom of Information (Scotland) Act 2002 (FOI(S)A).

You have requested certain information which we have decided not to disclose to you. Further information about this decision is set out below.

Information which is the subject of the request	Email correspondence including letter attachments between Parliamentary officials and the Ethical Standards Commissioner
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This information is held by us but we have decided not to disclose it as we consider it to be exempt information under FOI(S)A. Details are set out below.

Exemption(s)	Section 38(1)(b) of FOI(S)A – personal data Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation Section 26(a) of FOI(S)A – prohibited by or under an enactment
Why exemption(s) applies	Section 38(1)(b) Information concerning the names, email addresses and contact details of SPCB staff who are not senior public officials has been withheld from the correspondence provided as this information is the personal data of the individuals concerned and is exempt from disclosure under section 38(1)(b) of FOI(S)A. We have also withheld information about voluntary severance payments from the letter from Officeholder Services to the Ethical Standards Commissioner dated 29 June 2020. Personal data is information from which an individual can be identified. Given the low number of staff receiving voluntary severance payments, the disclosure of information about the payments could lead to the identification of the individuals concerned and the amounts they received. While information provided in the format requested might appear to be entirely anonymised, it is not (see discussion of true anonymization here - Common Services Agency)

[against Scottish Information Commissioner](#)).

Processing of personal data must be carried out lawfully and fairly. We can identify no legal basis for disclosure of the individuals' personal data. The individuals copied into correspondence with the Ethical Standards Commissioner and the individuals who received voluntary settlement payments from their employer would have a reasonable expectation that this information would not be disclosed and to do so would be neither lawful nor fair.

Processing of personal data must be carried out lawfully and fairly. We can identify no legal basis for disclosure of these individuals' personal data. The individuals concerned would have a reasonable expectation that this information would not be disclosed. We do not have their consent to disclose their personal data and to do so would be neither lawful nor fair.

Section 30(b)(ii)

Section 30(b)(ii) applies as the information that is withheld relates to private Committee discussions with the Ethical Standards Commissioner for the purposes of considering whether to extend the Code of Conduct for Members.

Disclosure of this information into the public domain would, or would be likely to, have a substantial inhibiting effect on the ability of the Standards Clerks to raise issues and discuss matters with the Commissioner for the purposes of developing the Code of Conduct in the public interest.

The effectiveness of the work of the Standards Clerks could be substantially prejudiced if they were unable to have a private space for free and frank discussion with the Commissioner out of concern that that information could, ultimately, be disclosed to third parties and published.

Section 26(a)

This section applies where the disclosure of information is prohibited by or under an enactment. The information covered by this exemption consists of email correspondence between the Ethical Standards Commissioner and the Standards Clerks in relation to

	<p>the investigation of a complaint by the Ethical Standards Commissioner. In terms of section 5(2) of the Scottish Parliamentary Standards Commissioner Act 2002, each stage of an investigation into a complaint shall be conducted in private. The complaint referred to was not upheld by the Commissioner and as the disclosure of information about the investigation of the complaint is prohibited, we have applied the exemption under section 26(a).</p>
<p>Public interest (where relevant)</p>	<p>As sections 26(a) and 38(1)(b) are absolute exemptions they are not subject to the public interest test.</p> <p>In relation to section 30(b)(ii) we consider that the public interest is best served by ensuring that the Standards, Procedures and Public Appointments Committee is able to have free and frank discussions with the Commissioner for the purposes of developing the Code of Conduct for Members which is in the public interest.</p>