

THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

REFUSAL NOTICE

Request Number: 2023-693782

Date: 28 November 2023

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	<ol style="list-style-type: none"><i>1. All correspondence received and sent by the Scottish Parliament, including internally, about Colin Beattie being on the Public Audit and Scrutiny Committee, between March 1 2023 and the date of this FOI.</i><i>2. All correspondence received and sent by the Scottish Parliament, including internally, about Douglas Ross being called a liar in the chamber on October 5, 2023, between that date and the date of this FOI?</i>
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Some information within the scope of the requests 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)	30(b)(i) Free and frank provision of advice 30(b)(ii) Free and frank exchange of views for the purposes of deliberation 30(c) Prejudice to the effective conduct of public affairs 38(1)(b) Third party personal data
Why exemption(s) applies	30(b)(i) Free and frank provision of advice Section 30(b)(i) provides that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. Section 30(b)(i) applies to advice provided by the clerking team to the Committee Convener falling within the scope of part one of the request as we consider disclosure of this professional advice would inhibit substantially the future provision of essential handling advice by the clerking team to the Convener of the Public Audit Committee (PAC). Advice of this nature is

essential in ensuring that the PAC Convener is provided with all necessary process and procedural information which applies in particular circumstances in order to ensure that the Convener is able to carry out his duties to the fullest extent possible. The information withheld represents advice relating to the effective running of the Public Audit Committee in a manner which enables the Committee to fulfil its scrutiny function.

Should this information, which represents free and frank provision of advice from the Clerking team to the Convener in support of the discharge of his role and which assists in ensuring that Committee business is conducted effectively and in accordance with the Standing Orders, be released into the public domain this would be likely to inhibit substantially the provision of similar advice by the Clerking team to the PAC Convener in future. This is because by making public the impartial advice from the Clerking team to the PAC Convener in relation to the subject of this request, members of the Clerking team would be less comfortable in providing full and frank advice necessary to assist the Convener in fulfilling his role effectively in future. This, in turn, would significantly inhibit the ability of the Committee to carry out its scrutiny work to the fullest extent.

Disclosure of information in response to a freedom of information request has the effect of releasing information into the public domain. This is confirmed in paragraph 33 of the Scottish Information Commissioner's exemption briefing [Exemption Briefing for section 38 \(personal information\)](#), which states that "*If information is disclosed under FOISA, it's disclosed into the public domain.*"

30(b)(ii) Free and frank exchange of views for the purposes of deliberation

Section 30(b)(ii) provides that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.

Section 30(b)(ii) applies to the exchange of views between parliamentary officials which falls within scope of part one of the request as we consider that the disclosure of this correspondence would inhibit substantially future free and frank exchange of views for the purposes of deliberation of these officials in

their roles. The withheld correspondence involves parliamentary officials sharing their expertise and knowledge with one another in order to support Committee business and provide well researched assistance with handling matters. Given the scope of the work undertaken by the Scottish Parliament and variety of specialisms of parliamentary officials, it is essential that parliamentary officials can discuss and agree courses of action for matters which arise or are likely to arise in order to be prepared and able to best serve the Committee and the Convener in fulfilling their roles. This information includes views exchanged for the purpose of ensuring the effective running of the Public Audit Committee so that it could continue to fulfil its scrutiny function to the fullest extent possible.

Without the ability of these parliamentary officials to engage with each other in the free and frank exchange of views for the purposes of deliberation, the running of the Public Audit Committee would be substantially prejudiced and this is likely to undermine the work of the Committee.

30(c) Effective conduct of public affairs

Section 30(c) provides that information is exempt if its disclosure would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

Section 30(c) applies to complaints received from members of the public which are within scope of parts 1 and 3 of the request.

To enhance the work of the Parliament and encourage members of the public to engage with the democratic process, it is important that individuals feel that they can communicate with the Parliament on matters which are important to them in a full and frank way without the concern that their correspondence will later be released into the public domain.

As stated above, disclosure of information in response to a freedom of information request has the effect of releasing information into the public domain.

It is our position that the disclosure of private individuals' complaints would be likely to discourage individual members of the public from engaging with and contacting the Parliament in a full and frank manner on issues that are important and of concern to

them were this to result in the disclosure of their complaints into the public domain. This would have a significantly detrimental effect on democratic engagement and therefore prejudice substantially the effective conduct of public affairs.

38(1)(b) Third party personal data

Personal data is information from which an individual can be identified.

In the case of part 1 of this request, information within the scope of the request includes personal data (names, job titles, email signatures, employment information and contact details) of Scottish Parliamentary Corporate Body (SPCB) staff and MSP staff who are not senior public officials.

Section 38(1)(b) of FOI(S)A provides that information is exempt information if it constitutes personal data and the first, second or third condition is satisfied. The first condition is that the disclosure of the information to a member of the public otherwise than under FOI(S)A would contravene any of the data protection principles contained in Article 5 of the UK GDPR. Under Article 5(1)(a), personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. In order to be processed lawfully, the processing must satisfy a condition in Article 6. Article 6(1)(f) provides that processing shall be lawful if it is necessary for the legitimate interests pursued by the controller or a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of the personal data.

Therefore, where the requestor, as a third party, has a legitimate interest in disclosure of this information, we must consider whether the disclosure is necessary to meet that legitimate interest. If so, we must balance this right with the rights of the data subject whose personal data falls within scope of the request. We have not been provided with details of such a legitimate interest in the release of the relevant third-party personal data by the requestor. In any event, it is our position that, should the requestor have a legitimate interest in the disclosure of the information, any such interest does not override the interests or fundamental rights and

	<p>freedoms of the data subject for the reasons set out below.</p> <p>The SPCB staff members whose personal data has been withheld from the information provided are not of a senior grade and would not reasonably have expected their names and job titles to be released into the public domain in relation to them going about their day-to-day roles. We do not consider that it would be fair to the data subjects to have their personal data disclosed in this way in the absence of the consent of the data subjects to such release, which we do not have.</p> <p>In this case, we do not consider that the interests of the requester would override the interests or fundamental rights and freedoms of the data subjects and therefore release of the information would not be fair in relation to the data subject and therefore section 38(1)(b) would apply.</p>
<p>Public interest (where relevant)</p>	<p>30(b)(i) Free and frank provision of advice</p> <p>Section 30(b)(i) is a qualified exemption which means that application of this exemption is subject to the public interest test. We therefore have to consider whether, in all the circumstances, the public interest in disclosing this information is outweighed by the public interest in maintaining the exemption.</p> <p>Whilst we recognise the public interest in transparency of Committee business, we must balance this interest against the public interest in maintaining the exemption in this case.</p> <p>In this case, we consider that the public interest in disclosure of this information is outweighed by the importance of ensuring that the PAC Convener can seek and receive free and frank advice from Committee clerks which is necessary to support him in his role as Convener and ensure the effective running of the Committee in accordance with proper procedure.</p> <p>We are accordingly of the view that in this instance the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.</p>

30(b)(ii) Free and frank exchange of views for the purposes of deliberation

Section 30(b)(ii) is also a qualified exemption and subject to the public interest test. We therefore have to consider whether, in all the circumstances, the public interest in disclosing this information is outweighed by the public interest in maintaining the exemption.

Whilst we recognise a public interest in transparency of Committee business, we must balance this interest against the public interest in maintaining the exemption here.

In this case, we consider that the public interest in disclosure of this information is outweighed by the importance of ensuring that parliamentary officials who require to share their expertise and knowledge with each other to produce the best assistance possible to the PAC Convener have the ability to freely and frankly exchange these views for the purposes of deliberation.

We are accordingly of the view that in this instance the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

30(c) Effective conduct of public affairs

Section 30(c) is also a qualified exemption and subject to the public interest test. We therefore have to consider whether, in all the circumstances, the public interest in disclosing this information is outweighed by the public interest in maintaining the exemption.

Whilst we recognise a general public interest in correspondence from members of the public received in the form of complaints to the Presiding Officer, we must balance this interest against the public interest in maintaining the exemption.

In this case, we consider that the public interest in disclosure of this information is outweighed by the importance of ensuring members of the public are able to confidentially communicate with the Parliament on matters which are important to them. There would be a reasonable expectation of confidentiality on the part of the individuals who have taken the time to communicate their views to us. Further, it is important that they feel free to express themselves and the matter they are corresponding about to the fullest extent without the fear that their correspondence,

which they have chosen to direct specifically to individuals at the Parliament, being released into the public domain.

We are accordingly of the view that in this instance the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

38(1)(b) Third party personal data

As section 38(1)(b) is an absolute exemption, it is not subject to the public interest test.