

# THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

## REFUSAL NOTICE

**Request Number: 2023-693606**

**Date: 15 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.

<b>Information which is the subject of the request</b>	Scottish Ministers who have received payment of the Officeholder Resettlement Grant including information about the amount of the payment and the tax free amount
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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.

<b>Exemption(s)</b>	Section 38(1)(b) of FOI(S)A – personal data
<b>Why exemption(s) applies</b>	<p>Personal data is information which relates to an individual who can be identified either directly or indirectly from that information or from the information in combination with other information.</p> <p>The exemption in section 38(1)(b) applies where the disclosure of information would contravene the data protection principles which are set out in Article 5 of the UK GDPR. The names of the individuals who received payment of the Officeholder resettlement grant and the amount of the grant paid to them together constitute the personal data of the individuals involved.</p> <p>Under Article 5(1)(a) of the UK GDPR, 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 personal data.</p>

Therefore, if the requester 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.

In this case we recognise that the requester, in seeking information about payment of public funds to individuals when they stop being an Officeholder, has a legitimate interest in scrutinising and knowing how public money is spent.

The next step is to determine whether the disclosure of this information is necessary to meet that legitimate interest. When considering whether disclosure is necessary for the legitimate interest of a third party, public authorities will need to consider whether the disclosure is proportionate as a means of achieving that legitimate interest or whether the requester's legitimate interest can be met by means which interfere less with the privacy of the data subjects.

In this case, information about salaries paid to Scottish Ministers and the formula used to calculate the Officeholder resettlement grant is publicly available online. Information about the salaries payable to the First Minister, Cabinet Secretaries and Scottish Ministers are publicly available on the Scottish Parliament website and a copy of this information is attached. We have also attached a copy of the formula used to calculate the extent of the Officeholder resettlement grant which is set out in paragraph 4 of Schedule 2 to the Scottish Parliamentary Pensions Act 2009 and provided two illustrative examples of the formula applied in practice in the reply to this request to assist the requester.

Given the availability of information online which would achieve the legitimate interest of the requester without disclosing the personal data of former Officeholders, the disclosure of the information in this case is not necessary to achieve the legitimate interest of the requester. As such, it would be unlawful to disclose Scottish Ministers' personal data here.

This means the exemption in section 38(1)(b) applies and the information is exempt from disclosure.

**Public interest  
(where relevant)**

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