

Our ref: Fol/19/02127

H. Swan

Email: [request-603601-f45bf7e8@whatdotheyknow.com](mailto:request-603601-f45bf7e8@whatdotheyknow.com)

11 October 2019

Dear H. Swan

### **Request under the Freedom of Information (Scotland) Act 2002 (FOISA)**

Thank you for your request dated 13 September 2019 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### Your request

You asked for copies of all correspondence between NRS and the Equality Network / Scottish Trans Alliance in relation to the sex and gender identity questions in Scotland's 2021 census.

#### Response to your request

1. I enclose a copy of most of the information you requested.
2. While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because exemptions under section 29(1) (policy formulation) and section 30(b)(ii) (free and frank exchange of views) of FOISA applies to that information. The reasons why these exemptions apply are explained in the Annex to this letter.
3. You will note from the content of some of the e-mails that NRS were provided with copies of evidence which these organisations provided to the Culture, Tourism, Europe and External Affairs Committee during the Committee's consideration of the Census (Amendment) (Scotland) Bill. This information is available from <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/109902.aspx>

Under section 25(1) of FOISA, we do not have to provide you with information if it is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website listed, then please contact me again and I will send you a paper copy.

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to:

Information Governance Team  
National Records of Scotland  
Ladywell House  
Ladywell Road  
Edinburgh  
EH12 7TF  
Email: [foi@nrscotland.gov.uk](mailto:foi@nrscotland.gov.uk)

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your rights is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

Yours sincerely,

Lyndsay Wilson  
Head of Policy and Legislation

## **REASONS FOR NOT PROVIDING INFORMATION**

### **Section 29(1)(a) – formulation or development of government policy**

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the development of policy for the Census (Amendment) (Scotland) Act 2019.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on the Census (Amendment) Scotland Act 2019 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.

### **Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation**

An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for officials to have a private space within which to discuss issues and options with external stakeholders before National Records of Scotland reaches a settled public view. Disclosing the content of these discussions with the Equality Network / Scottish Trans Alliance on the Census (Amendment) (Scotland) Bill will substantially inhibit such discussions in the future, because this stakeholder will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public, particularly while these discussions relate to a sensitive matter.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing

the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing officials a private space within which to communicate with appropriate external stakeholders as part of the process of exploring and refining the policy position on the Census (Amendment) (Scotland) Bill, that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good policy decisions can be taken based on fully informed advice and evidence, such as that provided by the Equality Network / Scottish Trans Alliance. Premature disclosure is likely to undermine the full and frank discussion of issues between NRS and this stakeholder, which in turn will undermine the quality of the policy making process, which would not be in the public interest. Moreover this information was provided by the Equality Network / Scottish Trans Alliance in confidence and there is an important public interest in avoiding the loss of stakeholder confidence, which would be inevitable if their contribution was released against their wishes.