

Our ref: FOI/19/02127

H. Swan

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

6 November 2019

Dear H Swan

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

Further to my acknowledgment email of 16 October 2019, I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for copies of correspondence between NRS and the Equality Network/Scottish Trans Alliance in relation to the sex and gender identity questions in Scotland's 2021 census.

I have concluded that the original decision should be confirmed, without modifications. I have also reconsidered the exemptions applied against the small amount of information redacted and withheld in relation to your original request. I would note that while two exemptions have been applied to the withheld information:

- Section 29(1)(a) – formulation or development of Government policy and
- Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

that I would take the view that the latter exemption, Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation, would be the primary reason for withholding the information. I accept that there is also a case for application of Section 29(1)(a), however this is of lesser relevance to the application of exemption Section 30(b)(ii). I would uphold the decision and explanation for the application of both exemptions to this request, provided in the original response of 11 October 2019.

I note the concerns, which you have raised in your correspondence seeking a review of this decision, that by partially withholding the information that National Records of Scotland (NRS) is not acting consistent with the advice given by the Office for Statistics Regulation in that: "Census offices should be open and transparent on their decision-making processes and in their decisions on Census questions and guidance, particularly in relation to any areas of contention."

NRS has sought to be open and transparent through discussions and engagement on the form and approach of Census 2021, in particular the question set. There have been a range of open and transparent engagements with stakeholders and open discussion with the Scottish Parliament through the legislative process.

That said, NRS also have to allow for the free and frank exchange of views by stakeholders for deliberation and as noted in the original response to your request, disclosure of such stakeholder views would in the future inhibit such discussions with stakeholders impacting policy development detrimentally. Disclosure of stakeholder views in such circumstances could lead to the stakeholder being reluctant to provide their views fully and frankly if they believe that those views are likely to be made public, particularly where the discussions relate to a sensitive matter. This decision has been taken after the application of the “public interest test” and in balance with the advice from the Office for Statistics Regulation.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner’s website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>. You can also contact the Commissioner at:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

**Linda Sinclair**  
**Director of Corporate Services**