



Paul Temple
request-832894-81f29d06@whatdotheyknow.com

Our Reference: 202200280506
Your Reference: 202200280506

13 May 2022

Dear Paul Temple ,

Further to my letter of 03 May 2022, I have now completed my review of our response (reference 202200280506) to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) .

Your original request sought:

1. a copy the submission mentioned in the copy of the email that was supplied in response to FOI/202100257829.
2. the name disclosed of the other possible candidate who would be less contentious than Jane Godley.

In regard to the second part of the request, for the name of the other possible candidate, our previous response indicated that the information was withheld because both 30(b)(ii) (free and frank exchange of views for the purposes of deliberation) and section 38(1)(b) (third party personal data) of FOISA applied to that information. In your email of 14 April you asked us to reconsider that decision, and to provide you with the name of the individual.

I have reviewed the handling of your original request and have concluded that the original decision to withhold the individual's name should be upheld, but with some modifications.

I am content that the exemption under section 30(b)(i)(ii) of FOISA (free and frank exchange of views for the purposes of deliberation) was applied correctly, and that releasing the name would indeed be likely to inhibit substantially the free and frank exchange of views for the purposes of deliberation. As the original response letter explained, this exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government

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reaches a settled public view. As stated previously, disclosing the content of free and frank discussions on individuals who could be approached in relation to working with a Scottish Government marketing campaign will substantially inhibit such discussions in the future. This is particularly important when the names of individuals to be approached are proposed prior to Ministerial review, and also prior to the individuals themselves being approached on whether they wish to be linked with the campaign or not.

As the original response explained, this exemption is subject to the public interest. I am satisfied that the original decision that, on balance, the public interest lay in favour of upholding the exemption, was correct. 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 Ministers and officials a private space within which to explore and refine the Government's position on which individuals should be approached to support marketing activity. This private thinking space is essential to enable all options to be properly considered, so that good decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the decision making process. This would not be in the public interest.

I have concluded that the decision in the original response that section 38(1)(b) (third party personal data) also applied to the same information, should now be substituted with a different decision. Whilst plainly the name of the individual does constitute their personal data, since this is the name of a figure with significant public profile, being discussed in connection to their professional role, I do not consider that release of the name would have contravened the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018.

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:

<https://www.itspublicknowledge.info/what-if-im-unhappy>

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
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

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Claire Prentice

COMMS : Marketing, Insight, Brand Scotland & Internal Comms

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