



Scottish Information
Commissioner
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Decision Notice 104/2026

Briefings/notes prepared for First Minister's Questions

Applicant: The Applicant
Authority: Scottish Ministers
Case Ref: 202201457

Summary

The Applicant asked the Authority for briefings or notes prepared for the First Minister for First Minister's Questions on a particular date. The Authority withheld the information requested under various exemptions in FOISA. The Commissioner investigated and found that the Authority had generally complied with FOISA, but he required it to disclose some information which it had wrongly withheld.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 30(b)(i), 30(c) (prejudice to effective conduct of public affairs); 38(1)(b), (2A), (5) (definitions of "the data protection principles", "data subject", "personal data" and "processing" and "the UK GDPR") and (5A) (Personal information); (47(1) and (2) (Application for decision by Commissioner).

United Kingdom General Data Protection Regulation (the UK GDPR) articles 5(1)(a) (Principles relating to processing of personal data); 6(1)(f) (Lawfulness of processing).

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), (4)(d), (5), (10) and (14)(a), (c) and (d) (Terms relating to personal data).

Background

1. On 12 July 2022, the Applicant made a request for information to the Authority. He asked for:
 - (i) A copy of any briefings or notes prepared for the First Minister on the subject of crown consent for the session of First Minister's Questions on 30 June 2021.
 - (ii) A copy of any correspondence between civil servants and ministers related to the production of briefings or notes requested above.
 - (iii) A copy of the briefing book prepared for the First Minister to use at First Minister's Question's on 30 June 2022.
2. The Authority responded on 20 July 2022. It relied on the exemption in section 30(b)(i) of FOISA for withholding some information from the Applicant, on the basis that disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation. The Authority noted the recognition in this exemption of the need for Ministers to have a private space in which to seek advice and views from officials, before reaching a settled public position which would be given in whatever final parliamentary answer Ministers then gave. The Authority provided the Applicant with a link to the Official Report of Parliamentary Business, where the First Ministers responses to First Ministers Questions (FMQ's) from 30 June were published. As this information in the official report was otherwise accessible to the Applicant the Authority relied on section 25 of FOISA in relation to this. The Authority also set out its consideration of the application of the public interest test in respect of both exemptions relied upon.
3. On 29 July 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he considered the exemption cited went beyond what was reasonable and that there was a strong public interest case for revealing some or all of the information requested. He believed that there had never been a blanket exemption on releasing information prepared for the First Minister's FMQ briefing book and provided an example of when he believed similar information had been disclosed. He stated that there was a clear public interest in further disclosure of information relating to the government's position on the crown consent process and provided a link to where he considered previous ministerial briefings on the topic had been released to [the Guardian newspaper](https://www.theguardian.com/uk-news/2022/jun/27/queen-secret-influence-laws-revealed-scottish-government-memo)¹ under FOI laws.
4. The Authority notified the Applicant of the outcome of its review on 26 August 2022, confirming its original position with slight modifications. It upheld its reliance on section 25 of FOISA, that some information was otherwise publicly available within the Scottish Parliament Official report from 30 June 2022 which records the answers to questions provided by the First Minister that day. In relation to part (ii) of his request, the Authority advised the Applicant that there was no correspondence between civil servants and Ministers relating to the production of briefings or notes on the subject of crown consent and provided a notice under section 17(1) of FOISA that it held no information falling under this part of his request. In relation to the remaining information falling within the scope of parts (i) and (iii) of the Applicant's request, the Authority upheld its reliance on section 30(b), and its view that the public interest favoured maintaining the exemption. Having noted the Applicant's comments

¹ <https://www.theguardian.com/uk-news/2022/jun/27/queen-secret-influence-laws-revealed-scottish-government-memo>

about the public interest in understanding the government's position on the crown consent process, the Authority provided the Applicant with a link to a previous FOI release and Parliamentary Question (PQ), which provided wider information about the process that was already available in the public domain.

5. On 21 December 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he considered the Authority's interpretation of section 30(b) was excessively heavy-handed, preventing the public from accessing information on a matter of significant importance. He also considered that the public interest was better served by disclosure. He believed the decisions of the Authority were incorrect and represented an attempt to quash scrutiny of its handling of the issue of crown consent. The Applicant added that he believed the briefing contained important insights into how the laws of our land were made and as such the Authority's position should be overturned.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 10 January 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application, invited its comments and asked that it send the Commissioner the information withheld from the Applicant.
8. The Authority provided the withheld information along with its comments. In its comments the Authority explained that it was withdrawing its application of the exemption in section 25(1) of FOISA. It stated that while it was continuing to rely on section 30(b)(i) for some of the withheld information, it was also seeking to rely on the exemptions in sections 30(c) and 38(1)(b) for information falling within scope of parts (i) and (iii) of the Applicant's request. The case was allocated to an investigating officer.
9. During the investigation, the Commissioner sought and received further submissions from the Authority. He drew the Authority's attention to [Decision Notice 021/2025](#)² which had been issued in the time since this application had been received. The case which led to Decision Notice 021/2025 concerned a request for similar information but for a different session of FMQs. The Commissioner also asked the Authority for further information around the questions that were preselected for the session of FMQs which was the subject of the request.
10. The Authority provided further information to the Commissioner that had been considered in its response to the Applicant at the time of his request and requirement for review but had been omitted in error from the information initially provided to the Commissioner. It also provided further comment on its reasons for relying on the exemptions in sections 30(b)(i) and 30(c) to withhold information falling within the scope of the request.
11. The Authority disclosed some information to the Applicant on 1 July 2025. This was resent to him on 2 December 2025.

² [Decision 021/2025 | Scottish Information Commissioner](#)

12. The Applicant was given the opportunity to make any comments on the exemptions being relied upon by the Authority and the additional information disclosed to him during the investigation, which he did.

Commissioner's analysis and findings

13. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Withheld information

14. Initially the Authority provided the Commissioner with information in 20 documents which it submitted constituted the withheld information. However, during the investigation information in a further 24 documents was provided. The Authority explained that the information in all 44 documents had been considered at the time of the Applicant's request and requirement for review, but an oversight had led to only 20 being initially supplied to the Commissioner.

The Authority's change of position during the investigation

15. During the investigation, the Authority's attention was drawn to [Decision Notice 021/2025](#)³ which considered a request similar to the Applicant's, in that it asked for the First Minister's briefing papers for FMQs for a particular date. In that decision, the Commissioner made the distinction between information relating to pre-selected questions that the Authority were aware would be asked at FMQs and those that were not.
16. On 1 July 2025 the Authority provided the Applicant with a revised review and disclosed some information that it had previously withheld. This was resent by the Authority to the Applicant on 2 December 2025 as the Applicant could not confirm he had received the July email.

It provided the following documents in full:

Documents 21, 22, 23, 25, 28, 30, 32, 33, 36, 37, 41

and provided some information in documents 24, 26, 27, 29, 31 and 34.

17. This information was initially withheld by the Authority under section 30(b)(i) of FOISA and has now been provided to the Applicant. In submissions to the Commissioner, the Authority recognised that it had not been entitled to apply this exemption to that information. Given these circumstances the Commissioner must find that the Authority was not entitled to rely on section 30(b)(i) to withhold this information and as a result it failed to comply with section 1(1) of FOISA.

Section 30(b)(i) – substantial inhibition to free and frank provision of advice

18. The Authority is withholding some information in documents 1, 3-7, 9-11, 14-18, 20, 24, 26, 29, 31 and 34 that formed briefing material for the First Minister for FMQs, under section 30(b)(i) of FOISA.

³ <https://www.foi.scot/decision-0212025>

19. Section 30(b)(i) of FOISA provides that information is exempt if its disclosure would, or would be likely, to inhibit substantially the free and frank provision of advice. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
20. In applying this exemption, the chief consideration is not whether the information constitutes advice, but whether disclosure of that information would, or would be likely to, inhibit substantially the provision of advice. The inhibition in question must be substantial and therefore of real and demonstrable significance.

The Authority's submissions

21. The Authority explained that FMQs was the opportunity for the opposition to question the First Minister (FM) on topical issues. It submitted that although it could be combative and political in nature, it served an important function in terms of public and political scrutiny of the Authority's decisions and policies.
22. It noted that preparation for the debate was very important and involved the FMQ team engaging with policy colleagues and briefings being commissioned on the areas judged most likely to arise during the debate. It stated that the briefings on those areas considered most likely to come up were considered "top picks". These were printed out and given to the FM in the FMQ folder. Other issues were captured in briefings within a folder provided to the Deputy First Minister to pass to the FM in parliament if needed. It submitted that over the two folders there might be 50-70 briefings covering a broad range of topics.
23. The Authority noted that FMQ briefings did not form part of the official record, nor were they part of the decision making or governance of the Scottish Government.
24. With regard to its application of section 30(b)(i), the Authority submitted that in order to fully prepare the FM for FMQs it was necessary to provide a free and frank assessment of what the lines of attack from opposition leaders might be, and to outline these within the advice to the FM.
25. It considered that given the challenging nature of the FMQ process, these lines were critical of the Government's position or actions and were presented without context or assessment of their validity within these briefings. In doing so they presented the Government's position in a negative light, often as a list of criticisms, as this was how it would be presented by the opposition. It was not a full, or often accurate, reflection of the position and not one that officials would present outwith the briefing process for FMQs. The Authority submitted that officials would be unwilling to present such critical arguments in this way if it was likely that they would ultimately be disclosed into the public domain, as doing so might be seen to give validity to these lines.
26. The Authority considered that the result of the substantial inhibition to officials' ability and willingness to provide such frank assessments as part of the written brief would have a detrimental effect on the FM's ability to prepare for questions that would be directed at them. Consequently, in its view, the ability to robustly defend the Authority's position would be compromised and the quality of this important public debate (and means of holding the Authority to account) would suffer.
27. The Authority explained that the officials' assessment was discussed with the FM, who might specify a particular subject they would like additional briefing on, based on a similar assessment.

28. It argued that the very existence of a briefing (within the briefing pack) reflected the outcome of that free and frank advice. If the contents of the FMQ folder were made public then there was a significant risk that this would be framed as a Government “worry list”, which would be a mischaracterisation of the position, even where individual material within the brief itself might seem to be, on the face of it, uncontroversial. If this occurred, the Authority argued that it was likely to lead to officials being reluctant to identify issues, or provide as much detail, as a result of concern that their advice would be disclosed - thereby having the effect of inhibiting the provision of free and frank advice.
29. The Authority noted that there was a high level of political interest in the context of the First Minister’s briefings, with opposition parties regularly submitting FOI requests for all or part of its contents. It believed that were the contents be released as a consequence of this appeal then it considered that such requests would become routine, resulting in the need to adjust its processes to reflect an expectation that every briefing would end up in the public domain, resulting in turn in less frank and candid advice being given. It argued this would affect the way FMQs were prepared and presented.
30. It considered that were this to happen, the frank assessment of the likely lines of attack would be removed from the written briefing and would probably be replaced by a fuller briefing which covered the policy in a more balanced way. The Authority noted that the points of attack would then be drawn out in discussion with the First Minister with the FMQ team and Special Advisors.
31. The Authority submitted that as the briefings drew on a large number of policy areas it would not be practical, given the demands on the FM’s time, for every policy official to be part of that discussion, meaning some of their detailed knowledge and understanding of the issues might be lost in that process. It considered that it was likely that the quality of the briefing would suffer from such a change and that the FM’s preparation would also suffer as they would rely on recall from that discussion, rather than on a written briefing used both as part of their preparations and as a reference document in the chamber.
32. The Authority stated that the format of the advice on how the FM should respond to likely challenges would also change so that it was a briefing that covered the policy in fuller, more balanced terms, rather than focusing on the areas which have been subject to criticism. It reiterated its view that officials would be substantially inhibited from providing such advice should it be disclosed. It submitted that it would be for the FM to extract from this longer, more balanced briefing, the lines they might wish to use having reflected on the verbal briefing they had received.
33. The Authority noted that each fuller briefing would be significantly longer and this would place a much greater demand on the FM’s capacity and have a significant impact on their ability to prepare for FMQs, which may not be feasible given the already limited window that was available for preparation. The Authority considered that it may be necessary to narrow the scope of the briefing provided to the FM, meaning that the risk of being asked a question in the chamber that the FM had not prepared for would increase.
34. The Authority considered that the cumulative impact of these changes would be that the FM would have a less focused briefing that was no longer targeted to the adversarial nature of FMQs. It was, in its view therefore, foreseeable that the kind of evidence-based detailed responses that have been given at FMQs in the past would be less likely and answers would become more high-level and less substantive. Given the important role that FMQs played in holding Government to account, the Authority submitted that if this occurred it would be

detrimental to the parliamentary process and would not be in the public interest. The Authority submitted that as FMQs were widely reported on, this would also impact on the public's understanding and perception of Government.

35. In relation to the information in the briefings for the pre-selected questions, the Authority submitted that it was made up of two parts; the draft answer for the FM and then a wider briefing that may or may not be required to answer any supplementary questions. The Authority noted that it had provided the Applicant with the information that had been used on the day by the FM but not the remainder, as this still formed advice and was subject to the arguments rehearsed above.

The Applicant's submissions

36. The Applicant did not consider there had ever been a blanket exemption on information from ministerial briefing notes.
37. He noted that the example he had referenced in his correspondence with the Authority was from a colleague who had asked for a copy of information or briefing notes provided to the Cabinet Secretary for Education and Skills in order to answer [S6T-00784](#)⁴. This was a question asked by Willie Rennie in the chamber on 14 June 2022. The Applicant noted that ultimately these documents were provided.
38. The Applicant also referenced a memo prepared for George Adam by civil servants, which was subsequently provided to the Guardian. He noted his view that this demonstrated both that this was a topic of public interest, and that there was no blanket basis for refusing to provide ministerial briefing documents on, in particular, the subject of crown consent.
39. In his view, the Authority's interpretation of section 30(b)(i) was excessively heavy-handed, preventing the public from accessing information on a matter of significant importance. The Applicant considered that the briefing (on crown consent) contained important insights into how the laws of the land were made and, as such, the Authority's position (to withhold the information) should be overturned.

The Commissioner's view about the exemption/exception

40. The Commissioner has carefully considered all of the arguments he has received from both the Applicant and Authority, as well as the withheld information. As mentioned previously, he has also taken into account the content of [Decision Notice 021/2025](#).

The Commissioner has also considered:

- the [Scottish Parliament's guidance on Parliamentary Questions](#)⁵ (including FMQs). This sets out at section 12.1 how FMQs can be lodged and how and when those for a particular FMQ session are selected. It also notes where and when those questions selected will be published, that is in the Question section of the next Business Bulletin.
- the questions selected by the Presiding Officer which were [published in advance](#)⁶ of the FMQs in question, and

⁴ <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-14-06-2022?meeting=13819&iob=125295#125295>

⁵ <https://acrobat.adobe.com/id/urn:aaaid:sc:US:ebc89a0e-7f19-44cb-b037-47ae63296714>

⁶ <https://www.parliament.scot/chamber-and-committees/whats-on-and-watch-live/business-bulletin-archive/session-6-business-bulletin-archive/session-6-2022-business-bulletin-archive>

- the [Official Record of the FMQs](#)⁷ in question, which sets out the questions asked and responses given by the FM.

41. The Commissioner notes that, in line with the Scottish Parliament's guidance on the operation of FMQs, the Authority had advance notice of some of the questions asked at FMQs, to which answers were provided by the FM at that time. The Commissioner also notes that other questions asked at FMQs were not known in advance (but were captured in the Official Record).

Information being withheld in relation to the pre-selected questions

42. As previously mentioned, some of the information relating to the pre-selected FMQs has now been provided to the Applicant.
43. The remaining withheld information within the briefing pack relating to the pre-selected FMQs comprises substantive information, in the form of context or background that may have contributed to the question or the topic being raised in FMQs.
44. While some of the information will have been provided in the expectation that it would, by virtue of the FM referring it in their FMQ responses, be suitable to be disclosed into the public domain, the Commissioner is satisfied that much of the briefing comprises a frank assessment of the challenges and advises the FM on possible responses.
45. The Commissioner notes the Authority's view that disclosure of such information into the public domain together with the expectation that this could become routine would likely change the way the FM is briefed. The Commissioner also recognises that such a situation would lead to the likelihood that less of this frank assessment would be included. The Commissioner accepts that there is a reasonable expectation that if this information were to be disclosed in response to this request that requests for information of this kind would become routine, as would disclosure. The Commissioner acknowledges that this may well lead to a change in the way the FM is briefed for FMQs, which may in turn impact the quality of the briefing provided for FMQs and the purpose these briefings are intended to fulfil.
46. Having considered the content of the withheld information, the Commissioner is therefore satisfied that disclosure would, or would be likely to, lead to officials being more circumspect when providing such advice to the FM in future, with a consequent substantially inhibiting impact on the free and frank provision of advice.

Remaining withheld information

47. The remaining withheld information was prepared in anticipation of possible topics and questions related to those topics that might come up in the other questions at FMQs that were not known in advance.

The Commissioner has considered the Applicant's view that the briefing contains important insights and should be disclosed.

48. He also notes the Authority's position that officials would be unwilling to present critical arguments such as those currently in the prepared briefing if it were likely they would ultimately be disclosed into the public domain. He recognises the Authority's view that the reluctance to present criticisms candidly in writing, for fear of appearing to give them undue weight or credence, may lead to greater oral briefing and less detailed written briefing, and

⁷ <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-30-06-2022?meeting=13857&iob=125661>

the impact this may have on FMQs and their purpose of holding the government to account in Parliament. As such, the Commissioner can accept that the information (documents 1, 3-7, 9-11, 14-18 and 20 in the briefing pack) prepared for possible topics and questions that might arise in FMQs was prepared without the expectation that it would be made public.

49. The Commissioner recognises that the Authority needs, in appropriate circumstances, a safe space in which full and frank advice can be provided in relation to issues that may come up for political debate, which is distinct from more substantive policy discussions.
50. The Commissioner also acknowledges that the specific nature of FMQs requires the Authority to anticipate areas of challenge and criticism (whether justified or not) over a wide range of topics and to prepare accordingly. This preparation is underpinned by the free and frank provision of advice and supporting information by officials, provided in the FMQ briefings.
51. While the Authority can anticipate likely questions at any given FMQs, it cannot (beyond those that have been pre-selected) be certain of what will be asked. The Commissioner accepts that the Authority must therefore prepare context, critical commentary and advice on various scenarios across a diverse range of possible topics and questions – many of which may not come up.
52. Having reviewed the withheld information the Commissioner is satisfied, on balance, that disclosure would, or would be likely to, lead to officials being more circumspect when providing such advice to the FM in future. If this occurred, he considers that it would be to the detriment of a FM's preparedness for, and therefore the effective function of, FMQs for the reasons given by the Authority.
53. The Commissioner has considered the Applicant's view that information of this nature has been disclosed in the past as well as the two examples he has referred to. The Commissioner notes that the information provided in response to the FOI request made by the Applicant's colleague matches the transcript of the answer provided in the Chamber.
54. The second example given by the Applicant refers to a [Guardian newspaper article](#), where an FOI release made by the Authority is reproduced. This link to the written questions that were asked and answered, and the information would seem to match that which is in the public domain on the Scottish Parliament website ([S6W-02027](#)⁸ and [S6W-02030](#)⁹).
55. Having looked at both of these examples, the Commissioner considers that the approach is consistent with that taken by the Authority in response to this request and to the Commissioner's position in [Decision 021/2025](#), in that the information provided matches with that which is available on the Scottish Parliament website either as an answer to an oral or written question. He does not, therefore, agree that that the information that has now been provided to the Applicant in this case differs from that that has been provided by the Authority in the past.
56. Having considered all of the circumstances, the Commissioner considers that disclosure of this information would, or would be likely to, cause substantial inhibition to the free and frank provision of advice and that the exemption in section 30(b)(i) was correctly relied upon for this information.

⁸ <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-02027>

⁹ <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-02030>

57. As the Commissioner is satisfied that this information is exempt from disclosure under section 30(b)(i) of FOISA, he is required to go on to consider the application of the public interest test in relation to this information.

The public interest test

58. The “public interest” is not defined in FOISA but has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. The public interest does not mean “of interest to the public” but “in the interest of the public”, i.e. disclosure must serve the interests of the public.

The Authority’s submissions on the public interest

59. The Authority recognised that there was some public interest in the release of the information withheld in the interests of openness, transparency and accountability. It also recognised the general public interest in what goes into the pack the FM uses to answer questions in sessions of FMQs. The Authority considered that the public interest in some of the information was met by some of the information (such as statistical data, e.g. NHS performance statistics) being published in various places. It also considered the public interest to be met as a consequence of the answers given by the FM in the chamber and the publication of the session on the Scottish Parliament website.
60. However, the Authority explained that the withheld information represented free and frank advice given to the FM, to allow them to understand the background to the questions that they might be asked. It highlighted that this information summarised criticisms and did not represent a balanced consideration of the issues. Indeed, it noted that the brief did include considerations on the validity or otherwise of the comments, and that publishing them without context would give disproportionate weight to criticism and the potential for misinterpretation.
61. The Authority submitted that it remained important that the FMQ team were able to share a free and frank summary of the criticisms, so the FM was fully prepared for the debate in Parliament.
62. It considered that should the quality of that debate or the substantive nature of the responses be impacted by changes to the briefings provided, then an important function of the Scottish Parliament would be negatively impacted, and the public accountability of the Authority reduced.
63. As such, the Authority’s view was that the public interest in disclosing the information was outweighed by the public interest in maintaining the exemption.

The Applicant’s submissions on the public interest

64. The Applicant believed there is a strong public interest for revealing some or all of the information requested.
65. The Applicant considered that the public interest was better served by the disclosure of the withheld information. He had a particular interest in the matter of crown consent and commented that with the ascension of a new monarch and ongoing public conversations and concerns around the extent of their powers he believed that it was important to hold the Authority to account on this issue and that it would be in the public interest for it to be released.

The Commissioner's view on the public interest

66. The Commissioner has carefully considered all of the public interest arguments he has received, together with the withheld information in question.
67. The Commissioner acknowledges that there is a public interest in transparency in relation to the actions and decision-making processes of both the Authority and the FM. He also accepts that disclosure of the withheld information in question would shed light on the FM's preparations for FMQs.
68. While there is a public interest in transparency in relation to how the FM is briefed in advance of FMQs, this must be balanced against the public interest in the Authority being able to provide the FM with advice in a private space in relation to how to respond to both pre-selected questions and anticipated questions at FMQs. The Commissioner recognises that there is a substantial public interest in ensuring that officials can advise and brief the FM in candour for FMQs.
69. The Commissioner considers that if all such preparatory material was required to be routinely disclosed, this would substantially inhibit the production of the FMQs briefing, with the result that the FM would be less able to participate fully in FMQs. He accepts that the public interest does not lie in disclosing information that would limit such future provision of advice, where to do so would substantially inhibit the quality of that advice or the ability of the FM to participate fully in FMQs.
70. On balance, having examined the withheld information and the submissions from the Applicant and the Authority, the Commissioner is not satisfied that the public interest arguments in favour of disclosure are sufficiently strong to outweigh the public interest in maintaining the exemption.
71. Consequently, the Commissioner finds that the public interest in maintaining the exemption outweighs that in disclosure. He therefore accepts that the information was properly withheld under the exemption in section 30(b)(i) of FOISA.

Section 30(c) – the effective conduct of public affairs

72. Section 30(c) of FOISA exempts information if disclosure “would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs”. The use of the word “otherwise” distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b).
73. Section 30(c) of FOISA is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would, or would be likely to, be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
74. The standard to be met in applying the tests contained in section 30(c) is high: the prejudice in question must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case by case basis, taking into consideration the content of the information and all other relevant circumstances (which may include the timing of the request).

75. The Authority is relying on section 30(c) to withhold all of the information in documents 2, 8, 12, 13, 19, 27, 35, 38-40 and 42-44, and some of the information in documents 1, 3-7, 9-11, 14-18, 20, 24, 26, 29, 31 and 34.

The Authority's submissions

76. The Authority submitted that FMQs provided a critical role in providing public and Parliamentary scrutiny on its policies. It believed that disclosure of the information would substantially prejudice the effective conduct of public affairs by undermining the FM and so leading to a decline in the quality of the answers and so the effectiveness of a key process used to scrutinise the Authority.
77. It considered that if opposition parties were aware, in advance, of how the FM would respond to challenges, their position in the debate would be undermined and this would have a detrimental effect on the FM's ability to robustly defend the Authority's position.
78. The Authority highlighted that many issues covered in the briefing pack continue to be controversial and arise repeatedly, and it is often the case that some of the information in the briefing packs can be reused and there is no way of knowing in advance what might be required again.
79. The Authority also noted that a review of the folder would provide an insight as to debate tactics and how the FM prepares responses, which would again give an advantage to the opposition parties which would undermine the FM's position.
80. As mentioned previously, the Authority argued that given the already high interest from political parties in the contents of the FMQ folder, if this material were to be released it would expect requests to become routine and it would revise the process and contents of the briefing to reflect an assumption of publication. In that instance, the Authority contended that it would not be able to tolerate a position where the lines used by the FM would be available to the opposition leader and, as such, it would no longer be able to provide lines of this nature as part of the briefing.
81. As a consequence, the Authority explained that the briefings would instead be changed which would, in addition to the detriment set out in paragraphs [25-32], cause the following detriment to the FM:
- the briefing pack would be substantially longer and difficult for the FM to manage within the limited window for preparation
 - the FM would be required to draft their own lines, without the input of policy officials who hold the relevant knowledge, which could lead to inaccuracies
 - the FM would no longer have easy access to a reference document whilst participating in FMQs in the chamber.
82. The Authority commented that the effect of this would mean that the FM was less well prepared for a substantive debate. It also considered it likely that the FM would be unable to fully read and digest a significantly longer briefing pack, meaning an increased likelihood that they may be asked about a topic they are not fully prepared for.
83. The Authority concluded that FMQs perform an important function for the parliament to hold the government to account. If the FM is not fully prepared to answer the questions that may be posed, then their ability to do that will be impaired.

The Applicant's submissions

84. The Applicant made no separate submissions in relation to section 30(c), but rather the Commissioner has considered his general comments (paragraphs 36-39). The Applicant did comment that he considered the Authority was throwing in exemptions hoping something stuck.

The Commissioner's view

85. The Commissioner has again considered the position of both the Applicant and the Authority.

Information being withheld in relation to the pre-selected questions

86. As mentioned earlier, where the information in the briefing pack relating to a pre-selected FMQ question matched or was virtually identical to responses provided by the FM at FMQs, the Authority has now provided this information to the Applicant.
87. Where the withheld information sits within a briefing paper relating to a pre-selected FMQ question and that information does not match with a response then provided by the FM at FMQs to that pre-selected question, the Commissioner accepts that disclosure would, or would be likely to, otherwise prejudice substantially the effective conduct of public affairs.
88. While some of the information will have been provided in the expectation that it would, by virtue of the FM referring it in their FMQ responses, be suitable to be disclosed into the public domain, the Commissioner is satisfied that the withheld information in question comprises options, which are advisory, for the FM to consider using, rather than a "script" to be used.
89. In relation to FMQs, which is the context in which the withheld information is held, the Commissioner accepts that the FM has the power to deliver, amend or simply not use the briefing information provided when responding to a question. He considers that the "settled" public position in relation to the question being asked is the position affirmed by the FM in FMQs.
90. The Commissioner is therefore satisfied, for similar reasons to those rehearsed in relation to the exemption in section 30(b)(i) of FOISA, that disclosure would, or would be likely to, otherwise prejudice substantially the effective conduct of public affairs.
91. As the Commissioner is satisfied that this information is exempt from disclosure under section 30(c) of FOISA, he is required to go on to consider the application of the public interest test in relation to that information.

Remaining withheld information

92. As rehearsed earlier, the Commissioner has distinguished between briefings relating to pre-selected questions for FMQs and those briefings created in anticipation of a wide range of questions and associated points of debate.
93. While acknowledging that the remaining withheld information in question here relates to briefings created in anticipation of likely questions rather than pre-selected questions, the Commissioner is satisfied, for the same reasons as set out above in relation to pre-selected questions, that disclosure of most of this information would, or would be likely to, otherwise prejudice substantially the effective conduct of public affairs.
94. As the Commissioner is satisfied that most of this information is exempt from disclosure under section 30(c) of FOISA, he is required to go on to consider the application of the public interest test in relation to that information.

95. Having considered the submissions from the Authority, the Commissioner is not persuaded that the harm anticipated by the Authority would occur if the information contained in Document 2, "Day Job Briefing" was disclosed in response to this request. The Commissioner failed to see where the arguments put forward by the Authority in relation to substantial prejudice applied to this particular information. This information differs in that it does not appear in any way sensitive or contentious and does not explore any of the potential challenges or criticisms around particular topics as the Authority suggested may be relevant to other withheld information. Rather, the Commissioner notes that, as it reflects specific work undertaken by the FM along with actions taken by the Authority, it is likely to be an accurate reflection of the facts.
96. As such, the Commissioner is not satisfied that disclosure would, or would be likely to, otherwise prejudice substantially the effective conduct of public affairs. He therefore finds that the exemption in section 30(c) of FOISA has been wrongly relied upon by the Authority in relation to the information in document 2. He therefore requires this information to be provided to the Applicant.

The public interest test

97. As the Commissioner is satisfied that the Authority was entitled to rely on the exemption in section 30(c) of FOISA for withholding the information in documents 1, 3-20, 24, 26, 29, 31, 34, 35, 38-40, 42-44 he is required to go on to consider the application of the public interest test.
98. As stated above, the "public interest" is not defined in FOISA but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest. The public interest does not mean "of interest to the public" but "in the interest of the public", i.e. disclosure must serve the interests of the public.

The Authority's submissions on the public interest test

99. The Authority's submissions in favour of disclosure of the information are largely set out in paragraph 59 above.
100. In acknowledging the public interest in release of the information, the Authority recognised the interest other political parties involved in these debates would have in the withheld information. It argued, though, that it considered this public interest to be served, at least in part, in relation to substantive policy points by announcements made on Scottish Government policy, noting that the substantive policy advice which informs government decision making, including assessment of risks and benefits, stakeholder views etc, is contained within policy submissions outwith the FMQ process.
101. The Authority's arguments in favour of maintaining the exemption are as set out above in paragraphs 60-63. The Commissioner will not reproduce these submissions here, but he will fully consider them in what follows.
102. In addition to the submissions narrated earlier, the Authority also stated that these briefings did not represent a balanced consideration of the issues or form part of the decision making and governance of the Authority. Their focus was on defensive lines which could be used in a political debate. The Authority submitted that this was substantially different from other advice and briefings received by Ministers, which provided more detailed consideration of the issue and/or invited Ministers to make a decision.

103. The Authority therefore considered that the public interest in allowing the FM space to be briefed appropriately outweighed that in disclosure and so favoured maintaining the exemption.

The Applicant's submissions on the public interest

104. The Applicant's submissions on the public interest are set out in paragraphs 64 and 65. The Commissioner will not reproduce these submissions here, but he will fully consider them in what follows.

The Commissioner's view on the public interest

105. The Commissioner has carefully considered all of the public interest arguments he has received, together with the withheld information in question.
106. The Commissioner recognises that there is a public interest in transparency and accountability concerning the FM's preparation for FMQs and the information available to them when providing answers in the chamber. He accepts that disclosure of the withheld information would allow public scrutiny and assessment of the FM's answers, which would not only inform public debate, but also satisfy the public interest in openness, transparency and accountability.
107. He agrees with the Authority that the public interest in disclosure is already met to an extent, by the FM's responses during FMQs (which are published online), other information routinely published (such as statistical data) and the Authority's substantive policy announcements.
108. As previously discussed, the Commissioner also accepts that there is a significant public interest in the Authority's officials and the FM having a private space in which to properly prepare for FMQs to support its effective functioning as a key component of the nation's democratic system. He finds that disclosure of the withheld information in question would, or would be likely to, lead to officials being more circumspect when providing advice to the FM in relation to FMQs in future. If this occurred, he considers it would be to the detriment of the FM's preparedness for, and therefore the effective function of, FMQs. This would not be in the public interest.
109. As set out above, the Commissioner has already accepted that disclosure of the remaining information under section 30(c) of FOISA would otherwise prejudice substantially, or be likely to, prejudice substantially the effective conduct of public affairs. Having considered the public interest arguments for and against disclosure, the Commissioner is satisfied that, on balance, the public interest in maintaining the exemption in section 30(c) outweighs that in disclosure of the remaining withheld information.
110. The Commissioner therefore concludes that the Authority was entitled to withhold the remaining information under the exemption in section 30(c) of FOISA.

Section 38(b) – personal information

111. Section 38(1)(b) of FOISA, read in conjunction with section 38(2A) (a) or (b), exempts information from disclosure if it is "personal data" (as defined in section 3(2) of the DPA 2018) and its disclosure would contravene one or more of the data protection principles set out in Article 5(1) of the UK GDPR.

112. The exemption in section 38(1)(b) of FOISA, applied on the basis set out in the preceding paragraph, is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.
113. To rely on the exemption in section 38(1)(b), the Authority must show that the information is personal data for the purposes of the DPA 2018 and that disclosure of the information into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles in Article 5(1) of the UK GDPR.
114. The Authority is withholding information under section 38(1)(b) in documents 4-6, 9-11, 14, 17, 20, 24, 26, 29, 31 and 34.

Is the withheld information personal data?

115. The first question the Commissioner must address is whether the specific information withheld by the Authority, and identified as personal data, is personal data for the purposes of section 3(2) of the DPA 2018.
116. “Personal data” is defined in section 3(2) of the DPA 2018 as “any information relating to an identified or identifiable living individual”. Section 3(3) of the DPA 2018 defines “identifiable living individual” as a living individual who can be identified, directly or indirectly, in particular by reference to –
- (i) An identifier such as a name, an identification number, location data, or an online identifier, or
 - (ii) One or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
117. The two main elements of personal data are that the information must “relate” to a living individual, and that individual must be identified – or identifiable – from the data, or from the data and other accessible information.
118. Information will “relate to” an individual if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them, or has them as its main focus.
119. An individual is “identified” or “identifiable” if it is possible to distinguish them from other individuals.
120. The Authority submitted that the information being withheld under this exemption consisted of names and contact details of individuals, and as such those individuals could be identified from this information and therefore it was personal data as defined in section 3(2) of the DPA 2018.
121. The Authority stated that it has a general approach of disclosing information about senior members of staff, releasing details of those within senior civil service roles and officials with relatively senior roles that are public facing but withholding those details for more junior members of staff.
122. Having considered the information the Authority is withholding, the Commissioner notes that it contains the names and contact details of individuals, and he accepts that these individuals are identifiable from it. He is therefore satisfied that the withheld information is the personal data of identifiable individuals and, as such, is personal data in terms of section 3(2) of the DPA 2018.

Would disclosure contravene one of the data protection principles?

123. The Authority considered that disclosure would contravene the first data protection principle in Article 5(1) of the UK GDPR, namely that “personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
124. “Processing” of personal data is defined in section 3(4) of the DPA 2018. It includes (section 3(4)(d)) disclosure by transmissions, dissemination or otherwise making available personal data. The definition therefore covers disclosing the information into the public domain in response to a FOISA request.
125. The Commissioner must consider whether disclosure of the personal data would be lawful. In considering lawfulness, he must consider whether any of the conditions of Article 6 of the UK GDPR would allow the data to be disclosed.
126. The Commissioner considers condition (f) in Article 6(1) to be the only one which could potentially apply in the circumstances of this case. This was also the position of the Authority in its submissions to the Commissioner.

Condition (f): legitimate interests

127. Condition (f) states that the processing shall be lawful if it “...is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data (in particular where the data subject is a child).”
128. Although Article 6 states that this condition cannot apply to processing carried out by a public authority in the performance of their tasks, section 38(5A) of FOISA makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under FOISA.
129. The tests to be met before Article 6(1)(f) can be met are as follows:
- i. Does the Applicant have a legitimate interest in obtaining the personal data?
 - ii. If so, would disclosure of the personal data be necessary to achieve that legitimate interest?
 - iii. Even if the processing would be necessary to achieve that legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subjects?

Does the Applicant have a legitimate interest in obtaining the personal data?

130. The Applicant did not make any specific comments to the Commissioner on his legitimate interests in obtaining the personal data but rather more general comments on his belief that the Authority had wrongly relied on all of the exemptions stated and their use was an attempt to quash scrutiny.
131. The Authority was not aware of any legitimate interest that the applicant has in the names and direct contact details of officials, or other information identifying individuals.
132. The Commissioner has considered the position of both the Applicant and the Authority. The names and contact details being withheld are those of staff involved in drawing up different parts of the briefing note prepared for the FM. The withheld information is the final version of the information prepared for the FM.

133. As previously mentioned, the briefing pack is prepared for the FM, and it is up to the FM whether and what information is disclosed into the public domain during FMQs. This can be from the briefing pack or not. The Commissioner has accepted, therefore, that the position taken by the FM during FMQs (whether it is in the briefing pack or not) is the “settled” public position. As such, the Commissioner cannot see how the provision of the names of staff who are junior or who are not public facing would add to the understanding of the information were it to be disclosed.
134. In these circumstances, the Commissioner does not consider that in this instance the Applicant does have a legitimate interest in obtaining the personal data being withheld in this case. He therefore finds that condition (f) of Article 6(1) of the GDPR cannot be satisfied. Accordingly, he accepts that making the personal data available would be unlawful.
135. Given that the Commissioner has found that the processing (i.e. making the information available, in response to the Applicant's request) would be unlawful, he is not required to go on to consider separately whether disclosure of the personal data would be necessary to fulfil any legitimate interest, or consider the data subject's interests or fundamental rights and freedoms, and balance them against any legitimate interest in disclosure.
136. In the absence of a condition in Article 6 of the UK GDPR which would allow the personal data of staff to be disclosed lawfully, disclosure would breach Article 5 of the UK GDPR. The Commissioner therefore finds that the withheld personal data are exempt from disclosure under section 38(1)(b) of FOISA.

Decision

The Commissioner finds that the Authority partially complied with Part 1 (in particular, section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that by withholding some information falling within the scope of the Applicant's request under sections 30(b)(i), 30(c) and 38(1)(b), the Authority complied with Part 1.

However, by wrongly withholding some information under sections 30(b)(i) and 30(c) of FOISA, the Authority failed to comply with Part 1.

The Commissioner therefore requires the Authority to provide the Applicant with the information in Document 2 (Day job briefing) by **26 June 2026**.

Given that the Authority has already provided the Applicant with the other information the Commissioner considered was wrongly withheld, the Commissioner does not require the Authority to take any other action in respect of this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

12 May 2026