

REASONS FOR NOT PROVIDING INFORMATION

The Scottish Government does not have the information

The Scottish Government does not have the information you have asked for because the Scottish Cabinet did not discuss the investigation being undertaken by James Hamilton QC in the period 1 January 2019 to 4 February 2021.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

An exemption applies

An exemption under section 38((1)(b) (personal information) of FOISA applies to some of the information you have requested. This includes personal details of civil servants below SCS grade and the personal e-mail addresses and telephone numbers of the SCS civil servants named in the emails released.

This exemption is not subject to the 'public interest test' so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

An exemption applies, subject to the public interest test

An exemption under section 30 (c) (the effective conduct of public affairs) of FOISA applies to the information you have requested.

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 some public interest in release because information being accessible enhances the scrutiny of decision making processes to improve accountability, ensures fairness in relation to the handling of complaints, enables the correction of misleading claims and would contribute to a debate on a matter of public interest.

However, this is outweighed by the public interest in allowing the consideration of the current investigation by James Hamilton QC to continue in private space. To disclose the information requested at this stage of the investigation would in our view compromise the ability of James Hamilton QC to engage in the free and frank exchange of views for the purpose of deliberation and would therefore impact adversely on his ability to effectively discharge his duties with respect to his role as the independent adviser on the application of the ministerial code and successfully conclude his investigation.