



PRIVATE AND CONFIDENTIAL

Tel: 0300 020 3000

By email:

Our ref: R023237

29 April 2020

Dear [REDACTED]

I refer to your e-mail of 8 April 2020 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

Under the Freedom of Information (Scotland) Act 2002, please provide me with copies of correspondence between the Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Government concerning the Children (Equal Protection from Assault) (Scotland) Act, from November 2019 to April 2020 - including letters, emails and circulars.

Please also provide me with copies of internal documents relating to this subject from the same period, including emails, minutes from meetings, notes and memos.

Please note that FOISA provides entitlement to request information only and not documents. However we do endeavour to provide assistance whenever possible.

I can confirm that email correspondence between COPFS and the Scottish Government for the period requested includes administrative information about Implementation Group meeting dates, meeting dial-in arrangements and the impact of Covid-19 on meetings etc; and also draft minutes for the November 2019 meeting of the Implementation Group which were published on the Scottish Government's website:

<https://www.gov.scot/publications/children-equal-protection-from-assault-scotland-bill-implementation-group-minutes-november-2019/>

The correspondence also includes debate on correspondence from a third party which is considered exempt from disclosure under Section 30 of FOISA. Disclosure of information is exempt where to do so would result in prejudicing the effective conduct of public affairs. Under Section 30(b)(ii) of FOISA, disclosure would in this case inhibit the frank and free exchange of views for the purposes of deliberation.

As the exemption is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the public interest in applying the exemption.

I have considered what effect disclosure of the information would have on the provision of advice or the exchange of views between organisations, including whether it would be more likely that persons offering advice and expressing views would be unwilling to do so in the future and whether it would materially differ because of the possibility of disclosure. I have taken the view that it is not in the public interest to disclose this information. I consider that if the information was released this would inhibit the future provision of free and frank advice without reserve and inhibit the free and frank exchange of view for the purposes of deliberation.

I can confirm that internal email correspondence includes information about draft Lord Advocate's guidelines and discussion around the administration of the internal recording of data on the COPFS operational database.

Lord Advocate's Guidelines on prosecution policy and guidance is only published where its publication would not, or would not be likely to, prejudice substantially the prevention or detection of crime; the apprehension or prosecution of offenders; or the administration of justice. Prejudice may include allowing offenders to circumvent the law by restricting their offending to conduct which falls short of a prosecution threshold or, for example, a threshold which determines the prosecution forum.

If you are dissatisfied with the COPFS response to your FOI request you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 60 working days* of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.

Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely,

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Response and Information Unit

A Register of FOI responses is published on the [FOI page](#) on the COPFS website: www.copfs.gov.uk.



***Coronavirus (Scotland) Act 2020:** *The maximum timescales within which public authorities must respond to requests for information and review under the Freedom of Information (Scotland) Act 2002 (FOISA) have been extended from 20 to 60 working days, authorities are still required to respond promptly to requests they receive. For updates please refer to the website of the [Scottish Information Commissioner](#)*

