



Scottish Information  
Commissioner  
[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

# Decision Notice 112/2023

---

## **Lochaber Smelter: Total fee paid to date by GFG Alliance under the Guarantee and Reimbursement Agreement**

**Authority: Scottish Ministers**  
**Case Ref: 202200291**

### **Summary**

The Applicant asked the Authority for the total fee paid by GFG Alliance companies under the Lochaber Smelter Guarantee and Reimbursement Agreement (GRA), and the dates when these payments were made. The Authority withheld the information.

Following an investigation, the Commissioner found that the Authority had correctly withheld the total fee paid, on the basis that disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs. For the dates when the payments were made, the Commissioner found that these had been wrongly withheld under the exemption claimed and required the Authority to disclose this information to the Applicant.

### **Relevant statutory provisions**

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

1. On 29 November 2021, the Applicant made a request for information to the Authority relating to the Lochaber smelter. He asked:
  - (i) *for the total fee that has so far been paid by GFG Alliance (GFG) companies under the 25-year guarantee entered into by the [Authority] relating to the Lochaber hydropower plant and smelter, and*
  - (ii) *when these payments were made.*
2. The Authority responded on 30 December 2021. It explained that, in 2016, the total discounted value of the fee premiums over the 25 year period of the guarantee was valued at £18.7m (as per methodology required by IAS 17 Provisions), and the carrying value of this financial asset was reduced to nil as a result of the implementation of the new accounting standard (as shown in its Consolidated Accounts for the year ended 31 March 2021). The Authority refused to disclose the payment dates under section 33(1)(b) of FOISA, on the basis that disclosure would, or would be likely to, prejudice substantially the commercial interests of the commercial entities involved. It believed disclosure would likely weaken the negotiating position of the business while providing commercially sensitive information to competitors, and impact on the long term profitability and attractiveness of the business to future investors. The Authority believed the public interest in transparency and accountability for public money was outweighed by GFG being able to negotiate effectively in commercial contexts to ensure the continued profitability and viability of the business, given its position as a major source of employment in the West Highlands.
3. On 7 January 2022, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because, while the response explained how the fee premiums were valued in the Authority's accounts, it did not disclose how much (if any), in cash terms, the Authority had received so far from GFG. The Applicant did not believe disclosure of the payments and when they were made would harm GFG's commercial interests, or reveal commercially sensitive information about its operations, costs or pricing. He believed that, given a £586m guarantee had been made with taxpayers' money, there was a clear and strong public interest in taxpayers knowing how much fee income they had received in return for providing the guarantee.
4. The Authority notified the Applicant of the outcome of its review on 23 February 2022, fully upholding its original decision. It stated that disclosure of the total fee paid so far would allow a third party to estimate (or assume) the total guarantee fee, which would hinder the company's commercial objectives and damage its position. The Authority stated that disclosing the timing of the payments would potentially impact the company's current operations in the UK by revealing to competitors, other stakeholders and interested parties, obligations that affect cash flow at those times of the year. In addition, in practice, a commercial lender or guarantor would not disclose this information and would consider the quantum and timing of payments confidential. The Authority believed that, given the importance of the business to those employed and the local economy, confirmation that all payments had been made to date satisfied the public interest in transparency without damaging the operations of the company.
5. On 8 March 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review as he did not believe that disclosure of the information would allow a

third party to correctly estimate the guarantee fee, or when future payments would be made, and it was not clear how disclosure could harm the company's position or hinder its commercial objectives. In his view, as taxpayers had been given very little information about the financing of this deal, there was a strong public interest in finding out more about what taxpayers had actually received, and when, in return for providing the guarantee.

## 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 25 April 2022, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to the Authority's justification for withholding the information requested under the exemption in section 33(1)(b) of FOISA.
9. On 16 December 2022, the Authority informed the Commissioner that it now wished to withdraw its reliance on section 33(1)(b) for the information originally considered to be commercially sensitive and now, instead, wished to apply section 30(c) to that same information. It provided submissions in support of its reliance on section 30(c).
10. The Authority also notified the Applicant of its change of position on 16 December 2022.
11. On 3 February 2023, the Applicant provided submissions to the Commissioner on the Authority's decision to now rely on section 30(c) of FOISA.

## Commissioner's analysis and findings

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

### ***Background: Lochaber Smelter Guarantee***

13. The Authority provided detailed background information in its submissions, the following parts of which may be helpful in explaining the background of the Lochaber Smelter Guarantee:
  - The Lochaber aluminium complex in Fort William is the UK's last remaining aluminium smelter, the operation of which is a key component of Scotland's industrial capability and a major source of employment in the West Highlands.
  - When Rio Tinto decided to review its Lochaber operations in 2016, the smelter faced the prospect of closure, endangering over 300 jobs in total (direct, indirect and induced). The Authority's focus at the time was to avoid the fragmentation of the Lochaber complex, to secure the long-term viability of the smelter and to realise further industrial and employment opportunities on site.

- In September 2016, as part of the Authority's wider overall objective to preserve jobs, protect the economy and sustain the metals industry in Scotland, it indicated a willingness to support any purchaser who would retain the smelter and associated hydro-power scheme together, and make the necessary commitment to significant investment in the development of the Lochaber assets. The Authority's offer included the potential to guarantee the power purchase obligations of the aluminium smelter and was made known on an even-handed basis to all short-listed bidders via the vendor (Rio Tinto).
- To deliver its objective for the site, the Authority is standing behind a portion of the power purchase obligations of the aluminium smelter operator (Alvance British Aluminium Limited (SmelterCo)) in the event that it cannot pay for the power it is contracted to take from the hydro-electric power station operator (Simec Lochaber Hydropower 2 Limited (HydroCo)). Both companies are part of the GFG Alliance (GFG) which is a collection of global businesses and investments.
- The commercial guarantee arrangement (the Guarantee) was entered into in December 2016 by the Authority, SmelterCo and HydroCo, and guarantees over a 25-year term that the Authority will pay for a percentage of the power that SmelterCo is contracted to purchase from HydroCo in the event that SmelterCo is unable to do so.
- The nominal value of the Authority's contingent liability on day one of the Guarantee was £586 million (i.e. the total amount of payments guaranteed by the Authority across the 25-year agreement), and is the largest industrial guarantee ever agreed by the Authority.
- In return for the Guarantee, the Authority receives a commercial guarantee fee (the Fee) from GFG.
- In March 2021, GFG's major providers of working capital and investment finance (Greensill Capital (UK) Limited and Greensill Capital Management Company (UK) Limited (together "Greensill")) entered administration.

#### *Authority's interests*

14. In addition to the background information above, the Authority explained that, as a result of its legal obligations arising from the Guarantee, it had a significant and specific financial and economic interest in the operation of the smelter to which the information related. In addition, it had an overarching general interest in the original objectives of the proposal, namely the retention of jobs and the support of the metals industry in Scotland.
15. The Authority acknowledged that the Commissioner had previously indicated in [Decision 144/2021](https://www.itspublicknowledge.info/decision-1442021)<sup>1</sup> that he did not consider the Authority to be a commercial actor in respect of Scotland's energy sector, but that it may have other economic interests in relation to the smelter.
16. The Authority considered that its commercial, economic and financial interests in respect of the Guarantee were manifest and quantifiable, and information within the material remained current. It also submitted that there was considerable uncertainty with respect to any future scenario involving the smelter, the loss of which could materially impact upon the local regional economy. It noted that, during the 18 months since the Greensill collapse, GFG and

---

<sup>1</sup> <https://www.itspublicknowledge.info/decision-1442021>

its primary shareholder, Sanjeev Gupta, had sought to defend and engage in legal action across multiple jurisdictions in order to preserve operations.

**Section 30(c) – Prejudice to effective conduct of public affairs – “otherwise” prejudice**

17. Section 30(c) of FOISA provides that information is exempt information if its disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
18. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority applying 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.
19. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur: therefore, the authority needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.
20. During the investigation, the Authority confirmed that it was now relying on this exemption to withhold some information, namely that which it had withheld, at review stage, under section 33(1)(b) of FOISA.

*The Authority's submissions on section 30(c)*

21. In its submissions to the Commissioner, the Authority believed it was essential for it to have a productive relationship with companies like GFG, which run businesses of national and local importance to Scotland. As the Lochaber smelter was a significant employer in the local area, the Authority had a significant interest in the business through the Guarantee.
22. The Authority submitted that there were three key reasons for withholding the information under the exemption in section 30(c), as follows:

Point (a) - Disclosure would weaken the Authority's ability to negotiate guarantee terms

23. The Authority submitted it was likely that external lenders will be involved in situations where it is providing guarantees to support businesses. It would be in these lenders' interests to negotiate the most generous guarantee terms possible, thereby passing risk to the Authority (which would be to the detriment of the Authority's interests were such a guarantee more likely to be called up). Disclosure would enable future lenders to form views about the Authority's likely appetite for risk and on how it takes decisions on these matters, and would allow them to use this as part of their negotiation strategy. The Authority believed the process of benchmarking one guarantee against another would ultimately be detrimental to its interests.

Point (b) - Disclosure would make distressed businesses less likely to engage with Authority support

24. In the Authority's view, businesses must have confidence that it will act in the way of a responsible entity, including protecting any and all information that may be shared in support of future guarantees, negotiations or support.

25. The Authority submitted that the information requested was private and confidential, it had not been published by the Authority, and was managed according to auditor's guidelines. The Authority believed it was difficult to identify a situation where a commercial entity (e.g. a bank or business) would reveal to a (non-commercial or non-statutory) third party, details of the fees relating to a commercial and legal agreement to which the third party was not privy. The Authority considered it ought to continue to act in a manner that recognises the value of the commercial information supplied to it, and any deviation from that would attract significant challenge and criticism, likely erode trust in its working relationship with GFG and significantly prejudice the Authority in respect of future business engagement.
26. The Authority submitted that businesses may be hesitant to consider financial intervention sponsored by it, or its Agencies, due to the risk of this becoming public knowledge, as this would alert customers and suppliers to the fact that the business was utilising last resort funding to continue to trade. This, in turn, would adversely affect the business as its customers and suppliers would be less willing to deal with it due to fear of wasted costs (e.g. where the business was unable to pay for materials ordered), leading to further difficulties in trading. In the Authority's view, disclosure would exacerbate the issue by underscoring not only that fact, but also the underlying basis on which decisions are made about sensitive business operations and situations, and this risk was not one that arose where a business secured support from a third party which was not a Scottish public authority. The Authority also believed this would heighten concerns about seeking support from the Authority, making such support less effective and thereby prejudicing its own commercial interests.
27. As these companies had not consented to disclosure, the Authority considered that release of the information would likely undermine trust in it, leading to businesses being reluctant to engage with it on such matters in the future, to the detriment of the Scottish economy and employment. For these reasons, the Authority believed disclosure would substantially prejudice its ability to take similar action to secure the future of employers and jobs.
28. The Authority argued that it must be able to assure businesses that sensitive information about their financial position and future plans will not be released as a result of their involvement with the Authority. In the Authority's view, maintenance of trust was important to allow it to engage with businesses in the best interests of Scotland, with the ultimate aim of preserving employment and growing the economy. It believed that disclosure of the information would jeopardise its ability to work in partnership with commercial actors such as GFG in future.

Point (c) - Disclosure would remove the private space for consideration that is required by the Authority to make decisions in relation to a significant contract with implications for jobs and the economy

29. The Authority submitted that the Guarantee was a live agreement, and it was required to take decisions in relation to the management of the Guarantee. It argued that release of information relating to the Guarantee, including the terms of the Guarantee, would inhibit substantially its ability to make such decisions in the public interest, by removing the private space required for it to do so.
30. The Authority considered that disclosure would also substantially prejudice its relationship with GFG. In its view, disclosing the content of a live agreement to which GFG is party could negatively impact on GFG's financial operations in a number of stated ways. The Authority believed that GFG would likely consider that it had revealed sensitive details which were

shared on a confidential basis in respect of the agreement, which would be detrimental to GFG and its ongoing relationship with the Authority.

*The Applicant's submissions on section 30(c)*

31. The Applicant acknowledged the importance of the Authority being able to have productive relationships with companies. He contended, however, that the arguments advanced by the Authority to support its case were inaccurate.
32. The Applicant submitted that it was wrong for the Authority to claim that disclosure of this information would weaken its ability to negotiate guarantee terms in future. In his view, any future negotiations would take place under different economic conditions involving different interest rates, different assets and, most significantly, a different counterparty. Moreover, he considered it very likely that the Lochaber Guarantee was different to other deals negotiated by the Authority.
33. The Applicant further submitted that it was wrong for the Authority to claim that disclosure would make it less likely that other businesses would engage with it. He argued that, given the significant "red flags" around the Lochaber deal, this Guarantee was very different to other deals the Authority may negotiate. In his view, no business operating normally would have any reason to fear that entering into a deal with the Authority would mean the commercial terms would be disclosed.
34. For these reasons, the Applicant believed the Authority could not claim that there was a "significant probability" that substantial prejudice would occur.

*The Commissioner's views on section 30(c)*

35. The Commissioner has considered the submissions from both parties. He has also taken into account the age of the information as at the date when the Authority issued its review outcome. He notes that the information requested, relating to the total fee paid and the dates of the payments, is relatively recent in relation to the date of the Authority's review.
36. The Commissioner must consider the withheld information with regard to the circumstances at the time of the Authority's review outcome. Given the sensitivity of the information and the circumstances surrounding it, the Commissioner is limited in the reasoning he can set out in this Decision Notice.
37. By the date of the Authority's review, the financial viability of the companies involved in the Lochaber Smelter Guarantee had changed considerably. However, what remained constant was the existence of the Authority's financial obligation in the event that the Guarantee was called-in.
38. The Commissioner has considered the withheld information in this case, which comprises the total fee paid to date (as at the date of the Applicant's request) by GFG under the Guarantee, and the dates when the payments were made. He is of the view that many of the arguments now put forward by the Authority for withholding this information under section 30(c) of FOISA were pertinent when the Authority issued its review outcome in February 2022 (i.e. when it withheld that same information under section 33(1)(b)).
39. While the Commissioner is not obliged to consider the information with regard to current circumstances, he is of the view, given the changing circumstances regarding GFG's financial situation in relation to the Guarantee, that the sensitivity of this information - even continuing into the present - is something which he cannot ignore. He recognises, however, that the level of sensitivity will not always be the same, say in a number of years' time.

40. Having considered all the arguments put to him, the Commissioner recognises that the information comprising the total fee paid to date is sensitive, and speaks to how much GFG is obliged to pay in return for the Guarantee. In the Commissioner's view, disclosure of the total fee paid to date would have a detrimental impact on the ability of the Authority, GFG and the other commercial companies involved in the Lochaber Smelter Guarantee, to continue in this arrangement in a competitive environment. He believes that this, in turn, would impede the Authority's ability to engage with businesses, in future similar arrangements, in the best interests of Scotland and its economy.
41. The Commissioner is satisfied that, if the total fee paid to date was disclosed, this would, or would be likely to, prejudice substantially the effective conduct of public affairs. He therefore finds that the Authority was entitled to rely on the exemption in section 30(c) of FOISA to withhold this information.
42. For the dates when the fee payments were made, the Commissioner does not, however, take the same view. He does not accept the Authority's arguments (as set out in its review outcome) that disclosure of the payment dates would reveal information about the obligations on GFG that would affect its cash flow at certain times of the year. Neither does he accept that disclosure would lead to the substantial prejudice claimed by the Authority with regard to its ability to conduct its public affairs, or the ability of GFG to continue to operate effectively in a commercial context.
43. The Authority has already confirmed that all payments were up to date when it issued its review outcome. The Commissioner accepts that an individual (including a competitor) could take an educated guess, based on historical payment dates, as to when future payments would likely be due. However, without knowing the actual value of the fee payments, which is the crucial element of such an argument, the Commissioner cannot see how such harm would occur by disclosing the dates in isolation.
44. The Commissioner therefore finds that disclosure of the payment dates would not result in the harm claimed by the Authority. He does not, therefore, accept that the exemption in section 30(c) of FOISA should be upheld in respect of this particular information.
45. Given that the Commissioner does not accept that the exemption applies to the payment dates withheld under section 30(c), he is not required to consider the public interest test in section 2(1)(b) for that information.
46. As the Authority is not relying on any other exemption to withhold that information (the payment dates), he requires the Authority to disclose it to the Applicant.
47. The Commissioner will now go on to consider the public interest test in respect of the information for which he has found that the exemption in section 30(c) is engaged (i.e. the total fee paid).

*Public interest test – section 30(c)*

48. Section 30(c) is subject to the public interest test required by section 2(1)(b) of FOISA. As the Commissioner has found that the exemption in section 30(c) was correctly applied to some of the withheld information in this case (i.e. the total fee paid to date), he is now therefore required to consider whether, in all the circumstances of the case, the public interest in disclosing that information is outweighed by the public interest in maintaining the exemption.

*The Authority's submissions on the public interest test – section 30(c)*

49. The Authority recognised the public interest in disclosure, as part of an open, transparent and accountable government and to inform public debate. It also recognised the public interest in the aluminium smelter complex, and in how the Authority works with companies such as GFG when public funds are involved.
50. However, given the importance of the smelter to Scotland, the Authority believed this was outweighed by the public interest in protecting GFG's trust in its relationship with the Authority. The Authority argued that it was of vital importance to Scotland and its people that it was able to intervene to protect jobs and the wider economy. When this involved a guarantee, such as this one, the Authority believed the public interest lay in protecting certain sensitive information to allow future interventions. It submitted that, ultimately, the aim of this intervention was to protect jobs, and there was no public interest in disclosing information that would jeopardise such future action. The Authority believed the public interest lay in protecting the interests of those employed within the Lochaber smelter business (circa 200 people), given its importance not only to those employees, but also to the wider economy of the local area.
51. The Authority also believed that the public interest in maintaining the private space necessary for it to make effective decisions outweighed that in the release of the information.

*The Applicant's submissions on the public interest test – section 30(c)*

52. The Applicant submitted a number of arguments in support of his position that the Lochaber deal was very different to other guarantees that the Authority has provided:
  - The Sunday Times had reported that GFG's Sanjeev Gupta contributed just £5 to complete the purchase of the smelter and adjacent hydro-power plants, leaving the deal almost completely underwritten by the taxpayer.
  - The Financial Times had reported that there remained significant unanswered questions over the GFG smelter company's accounts. The accounts were filed unaudited in July 2022 (even though GFG paid for an audit), its auditor resigned, no audited accounts had yet been filed, Gupta writes in the accounts that there is "significant doubt" about the company's ability to continue as a going concern, and the previous set of accounts were never filed. This, in itself, answers the Authority's objection that it would be the disclosure of the fee, rather than the financial health of GFG, that would be the factor that could endanger 200 jobs.
  - Greensill Capital, the main provider of funding to GFG, had collapsed in scandal.
  - the UK's Serious Fraud Office and the French police were investigating GFG Alliance companies over suspected fraud and money laundering.
53. In the Applicant's view, given such circumstances, it was overwhelmingly clear that there was a public interest in disclosure of the fee paid so far in return for the Guarantee, and when those payments were made. This would allow taxpayers to know what return they received for providing such a huge guarantee.

*The Commissioner's view on the public interest – section 30(c)*

54. The Commissioner has taken account of all of the relevant submissions from both parties, together with the remaining withheld information in this case (i.e. the total fee paid to date). He is required to balance the public interest in disclosure of the information requested

against the public interest in maintaining the exemption. In the context of FOISA, the public interest should be considered as “something which is of serious concern and benefit to the public”. As stated previously, due to the sensitivity of the information and the circumstances surrounding it, the Commissioner is limited in the reasoning he can set out in this Decision Notice.

55. As rehearsed above, the Commissioner has already accepted that disclosure of the total fee paid to date would, or would be likely to, cause substantial prejudice to the effective conduct of public affairs.
56. Taking into account the significant size of the Lochaber Smelter Guarantee and those potentially affected by the circumstances surrounding it, particularly were it to be called in, the Commissioner accepts that there is clear and substantial public interest in understanding the finer details of the Guarantee and any underpinning or associated information. However, he recognises that this must be carefully balanced against any impact that disclosure of such detailed information (whether it be financial, commercial or otherwise) would have had - at the time when the Authority issued its review outcome - with regard to the Lochaber smelter, the Guarantee itself (underwritten by the Authority) and what the likely circumstances might be were the Guarantee to be called in.
57. The Commissioner considers there is a significant and substantial public interest in maintaining the exemption in relation to information which could adversely impact the ability of the parties involved to continue, as planned, with the Guarantee. He recognises that, were circumstances to arise requiring the Guarantee to be called in, this would clearly impact the parties involved (including the Authority), the economy of the local area (and the wider Scottish economy) and the jobs of those individuals employed at the smelter and associated businesses, both directly and indirectly.
58. In the Commissioner’s view, there is also a substantial public interest in maintaining the exemption in relation to sensitive information which could adversely impact GFG’s current (and changing) financial situation and lead to the Guarantee being called in. He recognises that such a situation could lead to a number of unwanted circumstances presenting themselves, for example job losses, the requirement for a new agreement to be drawn up or entered into by the Authority, and a reduction in crucial commercial information being provided by businesses to the Authority which would inhibit the Authority’s ability to take fully informed decisions and secure best value for public money. Such circumstances would clearly impact on the Authority’s position with regard to its ability to effectively conduct its public affairs, and that would not be in the public interest.
59. The Commissioner notes that, in its review outcome, the Authority confirmed that all fee payments were up to date. In the Commissioner’s view, this goes some way to satisfying the public interest in transparency and accountability for public funds.
60. On balance, therefore, the Commissioner is of the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
61. The Commissioner therefore finds that the Authority was entitled to withhold the remaining information requested (i.e. the total fee paid to date) under the exemption in section 30(c) of FOISA.

## **Decision**

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

The Commissioner finds that, while the total fee paid to date was exempt from disclosure under section 30(c) of FOISA, the dates of the payments were not. Failure to disclose the dates was a breach of Part 1 (in particular section 1(1)) of FOISA.

The Commissioner requires the Authority to provide the Applicant with the payment dates by **8 January 2024**.

## **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.

**David Hamilton**  
**Scottish Information Commissioner**

**23 November 2023**

## **Appendix 1: Relevant statutory provisions**

### **Freedom of Information (Scotland) Act 2002**

#### **1 General entitlement**

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

#### **2 Effect of exemptions**

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
  - ...
  - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- ...

#### **30 Prejudice to effective conduct of public affairs**

Information is exempt information if its disclosure under this Act-

- ...
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

#### **33 Commercial interests and the economy**

- (1) Information is exempt information if-
  - ...
  - (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).
- ...

## 47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
- (a) a notice under section 21(5) or (9); or
  - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) state the name of the applicant and an address for correspondence; and
  - (c) specify –
    - (i) the request for information to which the requirement for review relates;
    - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
    - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...