

Permanent Secretary
Leslie Evans



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Mr Daren Fitzhenry
Scottish Information Commissioner
Kinburn Castle,
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22 May 2018

Dear Mr Fitzhenry

In light of our ongoing engagement about the Scottish Government's performance in responding to FOI requests, and our common commitment to improvement, I want to share with you a current case which has been drawn to my attention, and to let you know about the actions we are taking and the learning we might draw from it.

The case concerns two FOI requests about the Children and Young People (Information Sharing) (Scotland) Bill. These relate to, respectively, contact between the Scottish Government and witnesses who gave evidence to the Education & Skills Committee on the Bill (FOI/17/02940), and communication between the Scottish Government and representatives of the Education & Skills Committee (FOI/18/00444).

On receipt of the requests, the relevant Scottish Government team undertook the normal searches of our electronic management system (ERDM) and the mailboxes of officials in the team. However, this period coincided with an extended period of unplanned absence for a key member of staff. No searches of the relevant mailbox were undertaken in their absence. During some of that period, the staff member's line manager also had periods of unplanned absence.

In addition to the FOI responses, on 15 March 2018, the Deputy First Minister wrote to the Education and Skills Committee, setting out what was believed to be a comprehensive account of engagement officials, Special Advisers and Ministers had undertaken with Committee Clerks, Committee witnesses, and other stakeholders in relation to the Bill.

This followed a number of Parliamentary Questions and FOI requests, including those noted above, on the issue. Understandably, officials were asked to ensure all such engagement was disclosed in that letter. The team member who had been absent recalled particular meetings with three organisations and checked email records for details of them. Once emails confirming the meetings had taken place were identified, they were attached to the Deputy First Minister's letter. It was recognised that the emails fell within the terms of FOI/17/02940, and they were released, with an apology, to the requester on the same date as the Deputy First Minister wrote to the Committee (15 March 2018).

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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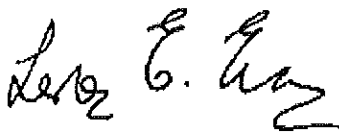
Six members of the Education & Skills Committee wrote to the Deputy First Minister on 26 April querying, amongst other things, why not all emails had been released under the two FOI requests mentioned above. This prompted the Deputy First Minister to ask officials to undertake further searching, and in particular, led to approval from senior colleagues that the mailbox of the absent team member should be searched (during a further period of absence). That search has now been carried out and additional relevant material has come to light which falls within the terms of the two FOI requests in question (FOI/17/02940 and FOI/18/00444). The information will be released to the requesters and the Committee members, and copied to the Convenor of the Committee.

This issue has highlighted a vulnerability of our practices to the unplanned absence of members of staff. Accordingly, I have instructed an assessment of our current systems, specifically in relation to:

- the sufficiency of existing guidance on responding to FOI requests in the unplanned absence of staff members who are likely to hold relevant information, and
- the steps in place to ensure compliance with guidance, including training.

Gerry Hendricks, who as you know, leads our FOI Unit, would be happy to discuss any aspect of this case and will update you on the steps we are taking following the completion of this assessment.

Yours sincerely



Leslie Evans