

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** Freedom of Information; [REDACTED] RE:  
**Subject:** FOIs 202400400846 & 202400400853 05  
**Date:** March 2024 14:18:10

---

Hi [REDACTED]

Thanks for sight of this.

I would agree that part 3 of the new request 202400400853 asks for the same information as was requested at part 3 of the initial request 202400395463 and is exactly the same wording as the dissatisfaction expressed with part 3 of that response which is being taken forward under the review reference 202400400846.

That said we are still required to formally respond to part 3 of the new request. If the review response upholds the decision to respond to this part under section 17(1) then you can either re-issue the same response to this part of both request and review, or you can respond to the review and refuse part 3 of the new request as repeated under section 14(2) of FOISA. The wizard in MiCase should have the standard wording for applying section 14(2) but for ease of reference I have included the sample wording in the footnote to this email and amended the last para slightly to reflect the fact that we do not hold the requested information.

I hope this is helpful.

Kind regards  
[REDACTED]

#### Footnote

While our aim is to provide information whenever possible, under section 14(2) of FOISA a public authority is not required to comply with a request for information if it is identical or substantially similar to a request which it has already complied with, unless a reasonable amount of time has elapsed between the two requests. This request is **[identical/substantially similar]\*** to your previous request which we complied with on **<insert date of response to previous request>**.

The Scottish Information Commissioner's guidance on repeated requests at:

<http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp> says that in considering whether a reasonable period of time has elapsed between the previous request and the new request, there are two questions which will help the authority:

- (i) has the information changed?
- (ii) have the circumstances changed?

In this case, our position that we do not hold the information requested is the same as at the time of your previous request. We have also considered the circumstances and have concluded that there has been no significant change. For these reasons, we consider that your request is repeated, and we are not obliged to comply with it.

-  
-

**From:** [REDACTED]@gov.scot>

**Sent:** Tuesday, March 5, 2024 9:37 AM

**To:** [REDACTED]@gov.scot>

**Cc:** Freedom of Information <foi@gov.scot>; [REDACTED]@gov.scot>

**Subject:** FOIs 202400400846 & 202400400853

Good morning [REDACTED]

I hope this email finds you well.

We have received an FOI request and a review by the same person and we believe he asked twice the same question.

FOI 202400400853:

'The SG stated:

"In response to your third question, we are interpreting your question as a request for notes made by Mr Hamilton himself in the course of his investigation. While our aim is to provide information whenever possible, in this instance the Scottish Government does not have the information you have requested as no notes were provided to the Scottish Government by Mr Hamilton, and he has confirmed that he does not hold any other material not passed to the Scottish Government. This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested."

Is the SG/Mr Hamilton claiming that during the course of his investigation Mr Hamilton created no notes and that explains the SG/Mr Hamilton's response of not holding notes? Or is it claiming that under the legal term of "hold" under FOISA it does not legally "hold" them?'

Review 202400400846:

'In regards to point 3, is the SG/Mr Hamilton claiming that during the course of his investigation Mr Hamilton created no notes and that explains the SG/Mr Hamilton's response of not holding notes? This would seem extremely unlikely to a fair observer, as note taking is a critical part of any investigation.

Or is it claiming that under the legal term of "hold" under FOISA it does not legally "hold" them, similar to their response/argument to my FOI from April of 2021 which resulted in the SG losing in the Court of Session over the definition of "held". If it is then I would remind the SG of the courts ruling in that case in terms of its outcome and what the court stated numerous times in their analysis in regards to legal wrangling over the term "hold".'

Could you please confirm it?

[REDACTED]

Propriety and Ethics Team

1W.10, St Andrews House, Regent Road, Edinburgh, EH1 3DG