

Decision Notice

Decision 185/2018: Mr Neil Lovatt and the Scottish Ministers

Legislating for the Job Grant

Reference No: 201800359

Decision Date: 16 November 2018



Scottish Information
Commissioner

Summary

The Ministers were asked for correspondence and analysis relating to “the Scottish Government’s conclusion that it did not have the necessary vires to legislate for the Job Grant in its current form”.

The Ministers provided one document with some information redacted and withheld the remaining information under a number of exemptions.

The Commissioner was satisfied that the information had been correctly withheld.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 29(1)(a) and (c) and (4) (definition of "government policy" and “the Law Officers) (Formulation of Scottish Administration policy etc.); 36(1) (Confidentiality)

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 5 January 2018, Mr Lovatt made a request for information to the Scottish Ministers (the Ministers). He referred to minutes of a meeting of the Joint Ministerial Working Group on Welfare that took place on 14 September 2017, and he requested:

“Can I see all correspondence and analysis relating to the Scottish Government’s conclusion that it did not have the necessary vires to legislate for the Grant in its current form?”
2. The Ministers responded on 1 February 2018. They provided Mr Lovatt with some information, but they withheld information under exemptions in sections 28, 29, 30 and 36 of FOISA (respectively, Relations within the United Kingdom; Formulation of Scottish Administration policy etc.; Prejudice to effective conduct of public affairs; and Confidentiality).
3. On 1 February 2018, Mr Lovatt wrote to the Ministers requesting a review of their decision, arguing that the public have an “obvious right to know” the extent of welfare powers held by their governments.
4. The Ministers notified Mr Lovatt of the outcome of their review on 22 February 2018. They stated that their original decision should be upheld without modifications.
5. On 22 February 2018, Mr Lovatt applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the Ministers’ review because he believed it was in the public interest to understand the extent of the welfare powers entrusted to the Scottish Government.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Lovatt made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

7. On 19 March 2018, the Ministers were notified in writing that Mr Lovatt had made a valid application. The Ministers were asked to send the Commissioner the information withheld from Mr Lovatt. The Ministers provided the information and the case was 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 Ministers were invited to comment on this application and answer specific questions including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr Lovatt and the Ministers. He is satisfied that no matter of relevance has been overlooked.

Withheld information

10. The Ministers withheld 35 documents, under one or more of the following exemptions: section 28(1), section 29(1)(a) and (c), section 30(b)(i) and (ii) and section 36(1) of FOISA. Some information from the documents was withheld because it fell outwith the scope of the request.
11. In addition, the Ministers withheld part of one document (document 2) under sections 29(1)(a), 36(1) and 38(1)(b) of FOISA. A redacted version of this document was provided to Mr Lovatt on 1 February 2018. Parts of this document were also withheld because they were outwith the scope of the request.
12. The Commissioner has reviewed all of the information that the Ministers have indicated to be out of scope of Mr Lovatt's request and he is satisfied that this is the case.
13. The Commissioner will now go on to consider the information withheld from Mr Lovatt under the exemptions cited above.

Section 36(1) of FOISA - Confidentiality

14. The Ministers have applied this exemption to information in documents 1 to 18, 20 to 28, and 30 to 35.
15. Section 36(1) of FOISA provides that information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information. One type of communication covered by this exemption is that to which legal advice privilege, a form of legal professional privilege, applies. Legal advice privilege covers communications between lawyers and their clients in the course of which legal advice is sought or given.
16. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled:
 - the information must relate to communications with a professional legal adviser, such as a solicitor or an advocate;
 - the legal adviser must be acting in their professional capacity; and
 - the communications must occur in the context of the legal adviser's professional relationship with their client.

17. The Ministers have submitted that the information relates to, or references, communications with in-house legal advisers acting in their professional capacity where the Scottish Government is their client. The communications occur in the context of the legal advisers' professional relationship with their client and in circumstances in which legal advice is being sought and provided.
18. The Ministers commented that "all of the material was either made or affected for the principal or dominant purpose of seeking or giving legal advice". The Ministers argued that disclosure of the material would breach legal professional privilege by divulging information about the points being considered by lawyers, the extent of their comments, and the issues being flagged up for further consideration. They argued that all of the necessary conditions for legal advice privilege to apply are satisfied.
19. The Ministers contended that a claim to confidentiality could be maintained in legal proceedings because the correspondence in question was shared only between the Scottish Government and its legal advisers. The information has not been shared with anyone outside the Scottish Government; as such, the information was confidential at the time they responded to Mr Lovatt's request and requirement for review, and it remained confidential.
20. Having considered the content of the withheld information and all the submissions in this case, the Commissioner is satisfied that the information meets the conditions for legal advice privilege to apply, and that the exemption in section 36(1) of FOISA is engaged.
21. The exemption in section 36(1) is a qualified exemption, which means that it is subject to the public interest test set out in section 2(1)(b) of FOISA. The exemption can only be upheld if the public interest in disclosing the information is outweighed by the public interest in withholding it.

Public interest test

22. The Ministers acknowledged that there is some public interest in disclosure of the withheld information as part of open, transparent and accountable government and to inform public debate. The Ministers also recognised that there is a strong public interest in relation to the introduction of a Job Grant Scheme and more broadly in social security provision and delivery in Scotland, and that releasing this information could help greater public understanding of the policy development and decision-making processes in respect of the Job Grant Scheme.
23. The Ministers submitted that the public interest in disclosure to promote openness and to help inform public debate has been met in part because some information had already been disseminated into the public domain, including a letter from the Minister for Social Security, to the Convener of the Social Security Committee, giving an update on the legislative vehicle that will be used for the Job Grant (the letter was not published until after Mr Lovatt made an application to the Commissioner).
24. The Ministers also explained that the Scottish Government website social security pages detail what benefits have been devolved to Scotland and show all published information, including minutes of meetings, statistics and analysis including the published minutes of the Joint Ministerial Working Group on Welfare.
25. The Commissioner suggested to the Ministers that there was a strong public interest in understanding the reasons for the Scottish Government's view that it did not have the relevant powers in this area. This led to the Ministers agreeing to provide Mr Lovatt with

some further explanation, and they did so in a letter sent to him on 17 July 2018 (seen by the Commissioner).

26. The Ministers argued that there is a very strong public interest in maintaining legal professional privilege and ensuring the confidentiality of communications between legal advisers and their clients or other legal advisers. They submitted that it remains important in all cases that lawyers can provide free and frank legal advice which considers and discusses all issues and options without fear that that advice may be disclosed and, as a result, potentially taken out of context. In areas which are the subject of political debate (such as the Job Grant), an expectation that legal advice could be released would inevitably lead to the legal advice being much more circumspect and therefore less effective.
27. The Ministers contended that there is a strong public interest in protecting the confidentiality of the withheld information in order to ensure that the Scottish Government is able to consider legal advice privately and then ensure the Scottish Government provides its fully considered position which is consistent with that advice.
28. While the Ministers recognised that there was some public interest in disclosing the legal advice, they argued that this was not sufficient to outweigh the very strong public interest in maintaining the confidentiality of legal advice in this case.
29. Mr Lovatt submitted that it is very much in the public interest for the electorate to understand the full extent of the welfare powers available to the Scottish Parliament. He referred to the minutes of the Joint Ministerial Working Group on Welfare, arguing that, as the Scottish Government has publicly referenced the fact that it has undertaken a detailed analysis¹, there is no reason for denying public access to this information.

The Commissioner's conclusions

30. The Commissioner must consider whether the public interest in disclosing the communications between the Scottish Government and its legal advisers outweighs the public interest in maintaining the exemption in section 36(1).
31. The Commissioner accepts that disclosure of the legal advice would increase transparency, particularly in relation to the decision-making processes of the Ministers in relation to the implementation of the Job Grant Scheme. Disclosure would allow the public to understand how the Scottish Government reached the view that it did not currently have the legal powers to implement the Job Grant.
32. The Commissioner notes that the Ministers wrote to Mr Lovatt in July 2018, and provided him with further information about the process by which the Scottish Government concluded that it did not have the vires to implement the Job Grant. The Commissioner notes that this information would have gone some way to meeting the public interest in this case, if it had been provided to Mr Lovatt as part of the review outcome, and not several months later. As it stands, the Commissioner must disregard this letter (and the letter referred to in paragraph 23) when reaching his decision; he can consider only the information that had been disclosed by 22 February 2018 (the date of the Ministers' review outcome).
33. The Commissioner accepts there is an identifiable public interest in disclosure of the legal advice in terms of accountability and transparency with respect to the Scottish Government's delivery of welfare payments and benefits.

¹ <https://beta.gov.scot/publications/joint-ministerial-working-group-on-welfare-minutes-september-2017/> (Item 3 point 6)

34. However, the public interest in disclosure of the legal advice must be balanced against the public interest in maintaining the right to confidentiality of communications between legal adviser and client. The Commissioner is of the view that this factor carries more weight, in this instance, than the public interest in understanding the issues affecting the implementation of the Job Grant Scheme.
35. The courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client, on administration of justice grounds. In a freedom of information context, the strong inherent public interest in maintaining legal professional privilege was emphasised by the High Court (of England and Wales) in the case of *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and O'Brien* [2009] EWHC 164 (QB)². Generally, the Commissioner will consider the High Court's reasoning to be relevant to the application of section 36(1) of FOISA.
36. The Commissioner acknowledges that there will be occasions where the significant public interest in favour of withholding legally privileged communications may be outweighed by a compelling public interest in disclosing the information. In this particular case, he has given weight to the views of Mr Lovatt regarding the public interest in understanding the outcome of the analysis conducted by the Scottish Government regarding the implementation of the Job Grant.
37. However, having considered the public interest arguments advanced on both sides, the Commissioner is not satisfied that the public interest in disclosure of this particular information is sufficiently compelling to outweigh the strong public interest in maintaining the confidentiality of communications between legal adviser and client. While he acknowledges the public interest in understanding the decision-making processes of the Scottish Government, particularly when it relates to the enactment of a welfare provision, he does not accept that this outweighs the very strong public interest in maintaining the confidentiality of communications between legal adviser and client.
38. Consequently, the Commissioner accepts that the Ministers correctly withheld all information to which they had applied section 36(1) of FOISA, including the information redacted from Document 2.
39. As the Commissioner has concluded that the information contained in documents 1 to 18, 20 to 28 and 30 to 35 is exempt under section 36(1) of FOISA, he will not go on to consider the application of any other exemptions to this information.
40. There are only three documents which the Ministers did not seek to withhold under section 36(1) of FOISA; namely, documents 19, 29 and 36. The Commissioner will now go on to consider each of these documents.

Section 29(1)(a) of FOISA – Formulation and development of Government policy

41. The Ministers withheld the information in documents 19 and 29 under section 29(1)(a) of FOISA.
42. Under section 29(1)(a) of FOISA, information held by the Scottish Administration is exempt if it relates to the formulation or development of government policy. "Scottish Administration" is defined in section 126 of the Scotland Act 1998 as Members of the Scottish Executive and

² <http://www.bailii.org/ew/cases/EWHC/QB/2009/164.html>

junior Scottish Ministers and their staff, and non-ministerial office holders of the Scottish Administration and their staff. In terms of section 29(4) of FOISA, and bearing in mind the timeframe of the request, "government policy" means the policy of the Scottish Administration.

43. For information to fall under this exemption, it need only "relate" to the formulation or development of government policy, i.e. to the consideration or development of options and priorities for Scottish Ministers, who will subsequently determine which of these should be translated into political action and/or legislation, and when.
44. "Formulation" of government policy suggests the early stages of the policy process, where options are identified and considered, risks are identified, consultation takes place and recommendations and submissions are presented to the Ministers. "Development" suggests the processes involved in reviewing, improving upon or amending existing policy: it can involve piloting, monitoring, analysing, reviewing or recording the effects of existing policy.
45. The Ministers submitted that they were still in the early stages regarding the policy and delivery plans for the new social security powers in Scotland and, allied to these, the potential introduction of the Job Grant. The Ministers argued that the creation of a Scottish social security system and the associated policies, including discussion in relation to the introduction of a Job Grant, is clearly a matter of policy formulation and development – specifically relating to policy on the transfer of responsibility for social security to the Scottish Parliament and Government.
46. The Ministers contended that Mr Lovatt's request related not only to the policy formulation on Scottish social security machinery, but to the implementation of constitutional change brought about by the Scotland Act 2016.
47. The Ministers referred to the Commissioner's *Decision 075/2006 Paul Hutcheon and the Scottish Executive*³ where the Commissioner took the view:

““formulation” means the output from early stages of the policy process where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a Minister”.
48. The Ministers submitted that the content of the documents withheld under this exemption reflected the beginning of the process of policy formulation. The documents informed the direction of early stages of policy thinking and set out options for consideration. The Ministers argued that these documents, given their content, relate to the formulation of policy.
49. The Commissioner has considered the information contained in documents 19 and 29. Both of these documents contain an email chain between branches of the Scottish and UK governments. It is clear that the focus of the discussions is the implementation of the Job Grant Scheme and how this Scheme can be enacted. The discussions do not represent a finalised version or approach but are more tentative and focus on the options available.
50. Having considered the information contained in documents 19 and 29, the Commissioner accepts that it relates to the formulation and development of government policy and, therefore, that it falls within the scope of the exemption in section 29(1)(a) of FOISA.

³ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2006/200501428.aspx>

Public interest test

51. The exemption in section 29(1)(a) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Having decided that the information is exempt under section 29(1)(a), the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
52. The Ministers acknowledged that there is a public interest in openness and transparency, and in ensuring that information is accessible and that public authorities can be held to account in this regard.
53. The Ministers argued that the formulation or development of policy on the Job Grant, together with the wider development of social security in Scotland, is an important aspect of the work of the Scottish Government. They stressed that it is important that decisions made with the aim of benefiting some of the most vulnerable people in Scotland are considered in an environment which is itself well informed and based on evidence, safe for those offering advice and direction, and private in order for all options to be considered and accepted or rejected.
54. The Ministers submitted that the public interest would be protected by ensuring that the formulation and development of a social security policy, including a specific Job Grant aspect, can be undertaken in a free and frank manner. The Ministers argued that the Scottish Government's ability to develop a coherent policy in which all options can be considered would be jeopardised if it was not able to discuss the issues in private with experts in the field. The Ministers also argued that it is in the public interest to allow Ministers and officials private space to formulate policy options for debate through this type of free and frank exchange.
55. The Ministers maintained that the public interest in disclosing the information is outweighed by the strong public interest in upholding the exemption.
56. Mr Lovatt referred to the minutes of the Joint Ministerial Working Group on Welfare, arguing that, as the Scottish Government has publicly referenced the fact that it has undertaken analysis, there is no reason for denying public access to this information. Mr Lovatt also argued that it was in the public interest for information regarding the full extent of the Scottish Parliament's welfare powers to be made publicly accessible.

The Commissioner's conclusions

57. The Commissioner has considered carefully the submissions made by both Mr Lovatt and the Ministers when balancing the public interest arguments for and against disclosure of the withheld information in documents 19 and 29.
58. He agrees that there is a general public interest in transparency and accountability, and in scrutinising actions taken in the process of policy development. He also accepts that disclosure of the information could offer the public more understanding of the reasons why the Scottish Government does not have the vires to implement the Job Grant, which is a matter of legitimate public debate.
59. The Commissioner must also take into account that the withheld information in this case was, and is, relevant in informing the Ministers' consideration and refinement of their policy position and options, and that the Job Grant had yet to be implemented and the policy was very much still in development at the time the Ministers reviewed their response to Mr Lovatt's request.

60. The Commissioner also acknowledges the general public interest in allowing all options to be explored and debated by the Ministers, and in allowing them a private space to discuss these options freely and frankly, in the interests of a fully-informed basis for policy development.
61. The Commissioner has considered the arguments put forward by Mr Lovatt, but he is not persuaded that there is a sufficiently strong public interest favouring disclosure to outweigh the public interest in withholding the information. He considers it is in the public interest that the Ministers should be able to formulate their policy position fully and consider all analysis and evidence, and to avoid being drawn into a public debate on matters which are still under consideration (which may end up delaying the implementation of the Job Grant, which would not be in the interests of the public).
62. In all the circumstances of this case, the Commissioner has concluded that the public interest in disclosure of the remaining withheld information is outweighed by that in maintaining the exemption in section 29(1)(a) of FOISA. The Ministers were therefore entitled to withhold the information under this exemption.
63. As the Commissioner has concluded that the information contained in documents 19 and 29 is exempt from disclosure under section 29(1)(a) of FOISA, he will not go on to consider the application of any other exemptions to this information.

Section 29(1)(c) of FOISA – the provision of advice by Law Officers

64. The Ministers have argued that the information contained in document 36 is exempt from disclosure under section 29(1)(c) of FOISA.
65. Under section 29(1)(c) of FOISA, information held by the Scottish Administration is exempt from disclosure if it relates to the provision of advice by any of the Law Officers or to any request for the provision of such advice. The phrase "Law Officers" is defined in section 29(4) (see Appendix 1).
66. Section 29(1)(c) is a qualified exemption, which means that the exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
67. Having considered the information withheld under this exemption, the Commissioner is satisfied that it falls within the exemption in section 29(1)(c) as it comprises advice from one of the Law Officers.

Public interest test

68. Having concluded that document 36 is exempt from disclosure under section 29(1)(c), the Commissioner is required to consider the application of the public interest test in section 2(1)(b) of FOISA.
69. In some respects, the Ministers' arguments on the public interest test relating to section 29(1)(c) were essentially the same as those submitted in relation to section 29(1)(a), and considered above. The Commissioner's conclusion on those arguments has already been set out, and he will not repeat the discussion in relation to section 29(1)(c).
70. In addition to the arguments already considered, and specifically in relation to section 29(1)(c), the Ministers submitted that a situation of complete openness between the conduct of Government business and professional advice from Law Officers on matters touching the rule of law is a fundamental constitutional guarantee. They argued that confidentiality is the essential protector of the candour upon which that guarantee depends, and the existence of the exemption helps to provide that confidentiality. Furthermore, the Ministers argued that it

helps to protect the principle of collective responsibility among Ministers (including Law Officers), and ensures that the Government as a whole defends the legal basis for its decisions, rather than delegating responsibility for the rule of law to the Law Officers.

71. The Ministers argued that any public interest arguments for disclosure must be weighed against the strong public interest in maintaining confidentiality of communications between the Law Officers, the Scottish Government's Legal Directorate and Ministers. On balance, the Ministers argued that the public interest in maintaining that confidentiality outweighs the public interest in disclosure, particularly as the Government has put some information into the public domain, and has set out its views for Mr Lovatt. The Commissioner must, however, disregard the Ministers' letter of July 2018 and the letter referred to in paragraph 23 when reaching his decision as he can consider only the information that had been disclosed by 22 February 2018 (the date of the Ministers' review outcome).
72. The Ministers also referred to *Decision 235/2013 Mr Mark McLaughlin and the Scottish Ministers*⁴ which considered the exemption contained in section 29(1)(c) of FOISA. In this decision, the Commissioner noted that section 29(1)(c) of FOISA provides specific protection from disclosure in relation to the seeking and providing of advice by Law Officers, and recognised the strong public interest both in maintaining that protection and in the interests of good governance. The Commissioner went on to note that section 29(1)(c) created an expectation that requests for advice to, and advice from, the Law Officers should be protected under FOISA, that such requests would usually relate to matters of particular sensitivity and that there was a public interest in permitting Ministers to seek and receive such advice in confidence.
73. As noted above, Mr Lovatt argued that it is in the interests of the electorate to understand the full extent of the welfare powers available to the Scottish Parliament and the opinion of their elected representatives with respect to those powers. Mr Lovatt argued that, as the Scottish Government has publicly revealed (in the minutes of the Joint Ministerial Working Group on Welfare) that it has looked at detail at the issues, there is no reason why this analysis should be withheld from the public.

The Commissioner's conclusions

74. As stated above, the Commissioner acknowledges the arguments put forward by Mr Lovatt and he accepts that there is a strong public interest in understanding why the Scottish Government does not have the legal competence to implement the Job Grant. The welfare powers of the Scottish Government impact on many people's lives and there is a clear public interest in understanding the issues affecting the implementation of the Job Grant.
75. However, the Commissioner is not satisfied that the public interest in disclosure of this particular information is sufficiently compelling to outweigh the strong public interest in maintaining the confidentiality of communications between the Ministers and its Law Officers.
76. Section 2.30 of the Scottish Ministerial Code⁵ (2018 edition) states:

It is part of the role of the Law Officers (the Lord Advocate and the Solicitor General for Scotland) to ensure that the Government acts lawfully at all times. Ministers and officials should therefore ensure that their decisions are informed by appropriate analysis of the legal

⁴ <https://www.itspublicknowledge.info/201301497.aspx>

⁵ <https://www.gov.scot/Publications/2018/02/4516/3>

considerations and that the legal implications of any course of action are considered at the earliest opportunity.

77. There is therefore a responsibility upon Law Officers to ensure that the Scottish Government acts lawfully, and an expectation that Ministers will take account of any relevant legal advice before following a course of action. It is the Commissioner's view that protecting the confidentiality of such legal advice is vital in ensuring that the Law Officers and Ministers are able to execute their functions appropriately. Given this, he considers that, in this case, there is a strong public interest in maintaining the confidentiality of such legal advice.
78. Having considered the competing arguments for and against disclosure, the Commissioner is not persuaded that there is an overriding public interest in the disclosure of the information withheld in response to Mr Lovatt's request. He finds, on balance, that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.
79. The Commissioner is therefore satisfied that the information contained in document 36 was correctly withheld under section 29(1)(c) of FOISA.

Decision

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Lovatt.

Appeal

Should either Mr Lovatt or the Scottish Ministers 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.

Daren Fitzhenry
Scottish Information Commissioner

16 November 2018

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.

...

- (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.

...

29 Formulation of Scottish Administration policy etc.

- (1) Information held by the Scottish Administration is exempt information if it relates to-

- (a) the formulation or development of government policy;

...

- (c) the provision of advice by any of the Law Officers or any request for the provision of such advice; or

...

- (4) In this section-

"government policy" means-

- (a) the policy of the Scottish Administration; and
(b) in relation to information created before 1st July 1999, the policy of the Government of the United Kingdom;

"the Law Officers" means the Lord Advocate, the Solicitor General for Scotland, the Advocate General for Scotland, the Attorney General, the Solicitor General and the Attorney General for Northern Ireland;

...

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...

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