



**Scottish Legal Aid Board**

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[www.slab.org.uk](http://www.slab.org.uk)

Reference Number: FOI2025/00141

22 August 2025

Dear

## **REQUEST FOR INFORMATION UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

Thank-you for your email received on 24 July.

You requested the following;

I am writing to request all records held by the Scottish Legal Aid Board (SLAB) from 1 December 2023 to the present relating to your internal response to the UK Supreme Court's ruling in *For Women Scotland Ltd v The Scottish Ministers* (2022/2023), which clarified that the protected characteristic of "sex" in the Equality Act 2010 refers to biological sex and not self-identified gender.

In light of this binding legal interpretation, please provide:

1. All internal or external communications, legal advice, meeting notes, or briefings which refer to:
  - The implications of the Supreme Court ruling for SLAB policy, funding criteria, or equality duties;
  - Any policy reviews, updates, or implementation actions taken or planned by SLAB as a result;
  - Any references to Stonewall, Equality Network, LGBT Youth Scotland, or other third-sector organisations linked to gender identity advocacy, in the context of the ruling.
2. A list of all payments made by SLAB since 1 January 2022 to:
  - Stonewall Scotland;
  - Stonewall UK;

- LGBT Youth Scotland;
- Equality Network;
- Scottish Trans;
- Or any other body contracted to deliver diversity training, policy advice, or audits referencing gender identity, equality, or inclusion.

For each payment, please include:

- Supplier name;
- Date and amount;
- Description or purpose of the payment;
- Department or programme under which it was authorised.

3. Any equality training materials used by SLAB staff from 1 January 2022 to the present, particularly where the concept of gender identity is referenced, defined, or equated with the protected characteristic of “sex”.

4. All Equality Impact Assessments (EQIAs) completed, revised, or planned in relation to the above — particularly those affected by the Supreme Court ruling or which reference the characteristic of sex or gender reassignment.

5. Details of any external audits, reviews or benchmarking assessments carried out by or in collaboration with Stonewall (e.g. Diversity Champions Programme or Workplace Equality Index) since 1 January 2022.

We can confirm that we do hold some of this information and are pleased to provide you with this information in full.

However, we are unable to provide you with information in relation to some aspects of your request because we do not hold the information, or we have considered and applied an exemption.

Your request was in relation to our internal response to the UK Supreme Court’s ruling in *For Women Scotland Ltd v The Scottish Ministers* (2022/2023), which clarified that the protected characteristic of “sex” in the Equality Act 2010 refers to biological sex and not self-identified gender.

Your request was in five parts. I will respond to each part below in turn.

#### **Part 1: legal advice, meeting notes or briefings.**

I can confirm that SLAB holds information that you request in a number of documents that we have identified after search and assessment. However we consider that at least three separate exemptions are relevant and will be applied by us to relevant parts of the material.

We are able to produce each of the documents that we have identified hold information that is in accord with your specification, but we have redacted the information to which we apply exemption in accordance with the following explanation.

We have used colour coding for the redactions.

The redactions in black are redactions made because we consider that the material is exempt under reference to section 30(b) of the Freedom of Information (Scotland) Act 2002 namely that

the release these sections of the material would both inhibit substantially the free and frank provision of advice in the future, and separately the free and frank exchange of views in relation to deliberations concerning how our equality duties interact with our roles including administering legal aid, providing advice on and developing legal aid policy, and as an employer.

The redactions in green are redactions made because we consider that the material is exempt under reference to section 36(1) of the 2002 Act, namely that the information is confidential and covered by legal privilege.

The redactions in grey are redactions made because we consider that the material is exempt under reference to section 38(1)(b) of the 2002 Act namely that the information is personal data, and that the information cannot be released without breaching the data protection principles. In practical terms this comes down to an assessment of whether the disclosure of this information to you is a form of data processing which is legal, fair and transparent.

Lawfulness of processing is addressed by Article 6 of UK GDPR and in reality requires us to assess whether we have the consent of the data subject(s) to the release of the personal data, or any legitimate interest that you have in disclosure is not outweighed by the fundamental rights and freedoms of the data subject.

We do not have the consent of the data subjects. On the issue of your legitimate interests you have at least in part outlined your interest in the information you seek. We accept that your interest is a legitimate interest. With that established there is legal authority for the proposition that we need to consider two further things. The first is whether you need (the personal data that has been redacted) to achieve your legitimate interests. It will be clear to you that the personal data redactions are in essence the names of persons involved in the issue or receipt of documentation. We are not persuaded that you need those data to achieve your interests. However, even if that was not the case, there is then the issue of whether any legitimate interest in disclosure is overridden by the interests or fundamental rights and freedoms of the data subjects. Our view is those rights of the data subject do override any legitimate interest (if any exists) in relation to that data. The identity of the persons involved are all at levels where they would have a reasonable expectation of privacy in communications and documentation of this nature and where their identity is not material to the nature of the material or its comprehension.

On this basis we do not consider that it would be lawful to disclose the material redacted in grey.

### **Public Interest Test**

The exemption under section 38(1)(b) is an absolute exemption and no consideration of the public interest test applies. However, the public interest test applies to the exemptions under section 30(b) and 36(1)

In terms of the public interest test as it relates to the exemption under section 30(b) we believe that the public interest in the disclosure of the information does not outweigh the public interest in withholding because we consider that the public interest here lies in the development of optimal advice on how our equalities responsibilities interact with our duties across fund administration, providing advice to the Scottish Government and as an employer in a challenging area where difficult and potentially controversial topics need to be explored and considered fully and candidly and before they are fully developed.

In terms of the public interest test as it relates to the exemption under section 36(1) we believe that the public interest in the disclosure of the information does not outweigh the public interest

in withholding because we consider that the strong inherent public interest of maintaining the right to confidentiality of communications between a legal adviser and their client is not outweighed by any other public interest in this advice  
That concludes this response.

## **Part 2: payments to certain organisations or referencing certain topics.**

No payments have been made to these bodies or to any other body referencing these topics. Therefore this is a notification that the information is not held - a section 17 (1) notice.

## **Part 3: Training materials.**

No training material has been used by SLAB in this period where the concept of gender identity is defined nor equated with the protected characteristic of “sex”.

One e-learning training previously used references gender identity. The course was “Transgender Awareness”: it defines a transgender person as “someone whose gender identity is different from the one they were assigned at birth”.

## **Part 4: EqlAs completed, revised or planned.**

No equality impact assessments have been specifically completed, revised, or planned in relation to the UK Supreme Court’s ruling in *For Women Scotland Ltd v The Scottish Ministers* (2022/2023). Therefore this is a notification that the information is not held - a section 17 (1) notice.

We have a programme of policy review and development across our organisation which includes equality impact assessments.

All our previous impact assessments are published on our website at <https://www.slab.org.uk/corporate-information/how-we-work/equalities-and-diversity/>

## **Part 5: audits, reviews or benchmarking.**

No audits, reviews or benchmarking assessments have been carried out. Therefore this is a notification that the information is not held - a section 17 (1) notice.

## **Your right to request a review of decision**

If you are dissatisfied with the way in which we have handled your request for information, you may ask us to review our decision. A request that we review our decision should be made in writing within 40 working days of the date of this letter or, if we have not responded to your request, within 40 days of the date by which we should have responded (that would normally be 20 days after receiving your request).

We will review our decision and tell you the outcome within 20 working days of receiving your request.

If, having done so, you remain dissatisfied, you may ask the Scottish Information Commissioner to

review our decision.

You must submit your request in writing to the Commissioner within 6 months of first receiving notice about the matter you are complaining about.

The Commissioner will not deal with an application unless SLAB's review process has been used and exhausted - in other words, until you have asked us to review our decision and you are not satisfied with our response or have not received a response within 20 working days of your request.

The Commissioner's contact details are:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

Telephone: 01334 464610

Website: [www.foi.scot](http://www.foi.scot)

E-mail: [enquiries@foi.scot](mailto:enquiries@foi.scot)

For details on how to appeal please go to their website [www.foi.scot/contactus](http://www.foi.scot/contactus)