

THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

REFUSAL NOTICE

Request Number: 2022-671597

Date: 8 March 2022

This refusal notice is provided in accordance with section 16 of the Freedom of Information (Scotland) Act 2002 (FOI(S)A).

You have requested certain information which we have decided not to disclose to you. Further information about this decision is set out below.

Information which is the subject of the request	<ul style="list-style-type: none">- <i>total number of resettlement grants paid under section 469 of the Scottish Parliamentary Pensions Act (ill health early retirement)</i>- <i>total amount paid</i>- <i>the number of cases where SPCB exercised its right (section 471) to request medical evidence in relation to these payments</i>- <i>confirmation that the SPCB are not aware of any scenarios where ill-health resettlement grants have been made and where the subjects are or were subsequent to the payments being made in gainful employment</i>
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This information is held by us but we have decided not to disclose it as we consider it to be exempt information under FOI(S)A. Details are set out below.

Exemption(s)	Section 38(1)(b) of FOI(S)A – third party personal data
Why exemption(s) applies	<p>Section 38(1)(b) provides an exemption to the duty of disclosure of information where the information contains personal data, the disclosure of which would be in breach of Article 5(1) of the UK GDPR.</p> <p>Personal data is information from which an individual can be identified. Fewer than 5 former Members have received payment of a resettlement grant for early retirement due to ill health. Given the low number involved, there is a real risk that the disclosure of information about the payments including the number of payments, the amount paid and the circumstances in relation to MSP ill-health retirement grants could result in the identification of a former Member receiving such payments either directly or indirectly.</p> <p>Although the request does not ask for the name of the</p>

	<p>former Members receiving resettlement grants, statistical information about the number of resettlement grants paid is personal data when an individual can be identified from that information. This was established by the decision of the Court of Justice of the European Union in Breyer v Bundesrepublik Deutschland. And</p> <p><u>Common Services Agency (Appellants) v Scottish Information Commissioner (Respondent) (Scotland)</u></p> <p>Article 5(1) UK GDPR states that personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject.</p> <p>In terms of Article 6 UK GDPR processing shall be lawful only if (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests of fundamental rights and freedoms of the data subject which require protection of personal data.</p> <p>Processing of personal data must be carried out lawfully and fairly. We can identify no legal basis for disclosure of personal data in this case. Former Members who have received private resettlement grants would have a reasonable expectation that this information would not be disclosed. They have not consented to its disclosure and to do so would be neither lawful nor fair.</p>
<p>Public interest (where relevant)</p>	<p>As section 38(1)(b) is an absolute exemption it is not subject to the public interest test.</p>