



5th September 2024  
Friends of the Earth Scotland  
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Dear First Minister,

Thank you for your letter of 21<sup>st</sup> August 2024 responding to the complaint we made regarding the Scottish Government's handling of the Section 36 planning application by SSE and Equinor for a new gas-fired power station and carbon capture plant at Peterhead, Aberdeenshire.

In our original complaint of 19<sup>th</sup> July 2024 we alleged 28 individual breaches of the Ministerial Code. After careful consideration of your response, we have decided to proceed with 27 of those allegations.

We remain unsatisfied as to whether the Scottish Government has adhered to both the spirit and the letter of the Ministerial Code and as such request a formal investigation, as set out in Stage 2 of the Scottish Government complaints procedure web page.<sup>1</sup>

To assist with the investigation, we have included our original complaint below with a commentary responding to your letter. The text of the original letter is provided in blue as follows.



### **Breaches of ministerial code regarding SSE and Equinor's application for a new gas-fired power station at Peterhead, Aberdeenshire**

This is a complaint regarding breaches of the Scottish Ministerial Code (2023 edition - 'the Ministerial Code').<sup>2</sup>

It is based on a review of monthly "Ministerial engagements, travel and gifts"<sup>3</sup> reports and the Scottish Parliament Lobbying Register<sup>4</sup> conducted using data available as of 28<sup>th</sup> March 2024.

This complaint arises from the conduct of several Ministers of the Scottish Government in relation to the application made by SSE and Equinor ('the developers') under Section 36 of the Electricity Act 1989 for consent to build a gas-fired power station and carbon capture plant at Peterhead ('the Peterhead application').

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<sup>1</sup> Scottish Government, 'Make a complaint' web page, last updated 6 September 2023. Source: <https://www.gov.scot/about/contact-information/make-a-complaint/>

<sup>2</sup> 2023 Edition of the Scottish Government Ministerial Code, <https://www.gov.scot/publications/scottish-ministerial-code-2023-edition/>

<sup>3</sup> Scottish Government, 'Ministerial engagements, travel and gifts': <https://www.gov.scot/collections/ministerial-engagements-travel-and-gifts/>

<sup>4</sup> <https://www.lobbying.scot/>

The Peterhead application was received by the Scottish Ministers on 18<sup>th</sup> February 2022 and is under consideration by the Energy Consents Unit (reference: ECU00003433).

This complaint alleges that:

- A. Actions by individual Ministers have prejudiced the energy consents process. (10 breaches)
- B. The former First Minister made public statements in support of the Peterhead gas power plant application. (1 breach)
- C. Meetings between the Scottish Ministers and the developers were not properly recorded by the Scottish Government. (16 breaches)
- D. Ministers have met repeatedly with the developers to discuss the Peterhead gas plant application, but they have refused to do so with objectors. (1 breach)

This represents 28 separate breaches of the Ministerial Code.

### **A & B. Actions taken by Ministers including the First Minister which have caused prejudice to the energy consents process**

Section 8 of the Ministerial Code is titled “Ministers’ Engagement on Planning Matters, including the Granting of Energy Consents”.

The Peterhead application is an application for an energy consent - section 8 of the Ministerial Code is directly relevant to the treatment of the Peterhead application by Scottish Ministers.

Paragraph 8.1 explains that the general principle of Section 8 of the Ministerial Code is that Ministers “should take particular care to avoid conflicts of interest when dealing with planning matters, including the granting of energy consents”.

Paragraph 8.3 states that:

*8.3 To help ensure the fairness and transparency of the planning system, the Planning Minister or any other Minister involved in the planning decision, must do nothing which might be seen as prejudicial to that process, particularly in advance of the decision being taken...*

Paragraphs 8.9 and 8.10 contain further requirements for the First Minister vis-à-vis the planning process, including that:

*8.9...The First Minister must be seen to do nothing that could be perceived as prejudicial to the planning process...*

*8.10 The First Minister should avoid making any public statement about the merits of a planning application (even in their capacity as local MSP) that might be seen to put the Planning Minister under pressure when making a decision about a planning matter...*

**Ministers have breached paragraphs 8.3 and 8.9 of the Ministerial Code on 10 occasions by providing the developers with vocal support for the Peterhead application and by meeting with developers without making clear that the planning process is independent and not impacted by their discussions (i-x below).**

**The First Minister has also breached paragraph 8.10 on one occasion by issuing a public statement in support of the development (viii).**

The individual breaches were as follows:

- (i) 26<sup>th</sup> April 2022 at a meeting between **Equinor** and Nicola Sturgeon MSP, First Minister. The First Minister was briefed by civil servants to say that she welcomed “Equinor’s continued investment in Scotland” and that “the Peterhead site is ideally placed for carbon capture technology, with access to essential CO2 transport and storage infrastructure being developed through the Acorn Project... Equinor and SSE Thermal’s proposed CCS Power Station formed part of the Acorn Cluster bid in the UK Cluster Sequencing process.” This is a specific offer of support for the Peterhead gas power station, and is therefore prejudicial to the planning process. The records state that the First Minister “recognised shared goals with Equinor.” Additionally, there is no mention in the meeting records that the development was under a live planning application.<sup>5</sup>
- (ii) 10<sup>th</sup> May 2022 at a meeting between **Equinor** and Richard Lochhead MSP, Minister for Just Transition, Employment and Fair Work, the Minister was briefed by civil servants to welcome “Equinor’s continued investment in Scotland”, referencing specifically that “in March 2022, SSE Thermal and Equinor submitted a planning application to the Scottish Ministers for a proposed 910MW Peterhead Carbon Capture Power Station project. This is now being considered by the Energy Consents Unit, with a determination likely next year.” There is no mention of any sensitivities regarding the development being a live planning application.<sup>6</sup>
- (iii) 16<sup>th</sup> May 2022 Michael Matheson MSP, Cabinet Secretary for Net Zero and Energy, provided a quote for a press release issued by **SSE**. The press release begins: “a planned new low-carbon power station at SSE Thermal’s Peterhead site in Aberdeenshire could generate significant benefits to the Scottish and UK economies over its lifetime.” Matheson is quoted as follows: “The innovative Peterhead CCGT Power Station is a fantastic example of how Scotland’s energy sector can make the transition to net zero and – as this study demonstrates – benefit the Scottish economy, providing employment and a just transition for our workforces... It shows just how important it is to invest now in carbon capture technology.”<sup>7</sup>
- (iv) 30<sup>th</sup> May 2022 at a dinner for investors organised by Ivan McKee MSP, Minister for Business, Trade, Tourism and Enterprise and attended by David Cairns of **Equinor**,

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<sup>5</sup> Scottish Government response to FOI request, ‘FOI 1, part 1’, p.1:

[https://www.whatdotheyknow.com/request/equinor\\_and\\_sse\\_meetings\\_with\\_th/response/2570032/attach/3/EiR%20202400396587%20Equinor%20meetings.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/equinor_and_sse_meetings_with_th/response/2570032/attach/3/EiR%20202400396587%20Equinor%20meetings.pdf?cookie_passthrough=1)

<sup>6</sup> Scottish Government response to FOI request, ‘FOI 1, part 1’ (link above), p.14

<sup>7</sup> SSE website, copy available on request from FoES if required: <https://www.sse.com/news-and-views/2022/05/peterhead-carbon-capture-project-to-contribute-660-million-to-scottish-economy/>

the Minister was briefed by civil servants as follows. “Peterhead Carbon Capture Power Station: This is being developed by SSE Thermal and Equinor. The proposed plant could become one of the UK’s first power stations equipped with a carbon capture plant to remove CO2 from its emissions and would connect into the Scottish Cluster’s CO2 transport and storage infrastructure, which underpins plans to deliver one of the UK’s first low-carbon industrial clusters” and that the Minister should “offer your support in any challenges faced by the organisation.” There is no mention that the development was a live planning application.<sup>8</sup>

- (v) 16<sup>th</sup> June 2022 a video conference took place between Michael Matheson MSP, Cabinet Secretary for Net Zero, Energy and Transport, and **Equinor** responding to a letter from David Cairns, Equinor, in which he was “thanking you for your support on a media release relating to Peterhead Carbon Capture Power Station”. The Minister was briefed by civil servants that “SSE Thermal and Equinor unveiled plans to jointly develop a new low-carbon power station at Peterhead”, that “the Peterhead site is ideally placed for carbon capture and storage technology...”, that the Scottish Government “supports the development of CCUS” and that “The Scottish Government is a strong advocate for the development of Carbon Capture Utilisation and Storage (CCUS). We believe Scotland is uniquely positioned to deploy this technology on an industrial scale...”, emphasising the interconnected nature of the Peterhead proposal with other Scottish Government supported initiatives. There is no mention that the development was a live planning application.<sup>9</sup>
- (vi) 10<sup>th</sup> August 2022 at a video conference between **Equinor** and Nicola Sturgeon MSP, First Minister. The First Minister was briefed by civil servants that Equinor were “collaborating with SSE Thermal to develop Peterhead Carbon Capture Power Station which is expected to start operations by 2027” and that the “Scottish Government have previously welcomed... Equinor’s partnership with SSE to produce power with carbon capture and storage in Peterhead”. There is no mention that the development was a live planning application.<sup>10</sup>
- (vii) 2<sup>nd</sup> May 2023 at a video conference between three representatives of **Equinor** including the CEO and Humza Yousaf MSP, First Minister. The First Minister was briefed by civil servants that Equinor were “collaborating with SSE Thermal to develop Peterhead Carbon Capture Power Station which is expected to start operations by 2027”. There is no mention that the development was a live planning application.<sup>11</sup>
- (viii) 18<sup>th</sup> July 2023 at a visit to the existing Peterhead gas power station which, according to an email from Tom Thomson, Special Advisor to the First Minister, dated 14<sup>th</sup> July 2023, had the express purpose of discussing “SSE proposal for [sic] CCS energy plant”.<sup>12</sup> First Minister Humza Yousaf MSP invited photographers to the event and

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<sup>8</sup> Scottish Government response to FOI request, ‘FOI 1, part 1’ (link above), p.37

<sup>9</sup> Scottish Government response to FOI request, ‘FOI 1, part 1’ (link above), p.41-42

<sup>10</sup> Scottish Government response to FOI request, ‘FOI 1, part 1’ (link above), p.56

<sup>11</sup> Scottish Government response to FOI request, ‘FOI 1, part 1’ (link above), p.76

<sup>12</sup> Scottish Government response to FOI request, ‘Peterhead Combined Cycle Gas Turbine (CCGT) power station development: EIR release’, p.7:

<https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2024/03/foi->

was pictured wearing an SSE jacket. He appeared on a promotional video for SSE saying “what I’ve been really impressed with is their plans for the future”.<sup>13</sup> The Scottish Government tweeted about the event that “On a visit to SSE Thermal Peterhead Power Station, the FM said the scheme is vital to Scotland’s transition to clean energy.”<sup>14</sup> A Scottish Government press release included a statement from SSE and the First Minister about the closely associated Acorn CCS project.<sup>15</sup> Scottish Government records associated with the meeting make no mention that the development was a live planning application.<sup>16</sup>

- (ix) 8<sup>th</sup> November 2023 at a meeting between **Equinor** and Humza Yousaf MSP, First Minister. The First Minister was briefed by civil servants that “Equinor is collaborating with SSE Thermal to develop the proposed 910 MW Peterhead Carbon Capture Power Station, which could be operational as early as 2027.” A list of “sensitivities” is provided but there is no mention that the development was a live planning application.<sup>17</sup>
- (x) 1<sup>st</sup> February 2024 Neil Gray MSP, Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, spoke and presented an award at an event whose lead sponsor was the “**Peterhead Carbon Capture Power station**”. It is highly likely that representatives of the developers were present<sup>18</sup> and the Scottish Government have not provided evidence to show that measures were taken to ensure the planning process was unaffected.<sup>19</sup>

## **A&B-2. Addressing the response from the First Minister regarding section A&B of the original complaint:**

1. The First Minister claims that evidence we provided, showing that Ministers were briefed to support the developers (A&B i, ii, iv, v, vi, vii, ix) is not relevant, stating that “being in receipt of official briefings is a passive act on the part of Ministers... Ministers cannot act in breach of the Code if they themselves have not undertaken the action.” We contest this claim because:
  - a. Supportive language towards the developers appears in multiple briefing notes to different Ministers over a course of several months and as such it is

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[202300378265/documents/eir-202300378265---information-released---annex-b/eir-202300378265---information-released---annex-b/govscot%3Adocument/EIR%2B202300378265%2B-%2BInformation%2BReleased%2B-%2BAnnex%2BB.pdf](https://www.scot.nhs.uk/202300378265/documents/eir-202300378265---information-released---annex-b/eir-202300378265---information-released---annex-b/govscot%3Adocument/EIR%2B202300378265%2B-%2BInformation%2BReleased%2B-%2BAnnex%2BB.pdf)

<sup>13</sup> SSE, ‘Scotland’s First Minister Visits SSE Thermal Peterhead Power Station’: <https://www.sse.com/news-and-views/2023/07/scotland-s-first-minister-visits-sse-thermal-s-peterhead-power-station/>

<sup>14</sup> Twitter / x.com, 18<sup>th</sup> July 2023: <https://twitter.com/scotgov/status/1681328435979796480>

<sup>15</sup> Scottish Government website, copy available on request from FoES if required:

<https://www.gov.scot/news/uk-government-urged-to-end-carbon-capture-scheme-delays/>

<sup>16</sup> For the avoidance of doubt, the comments and actions of the First Minister which are described in this paragraph were contrary to paragraphs 8.3, 8.9 and 8.10 of the Ministerial Code. With respect to paragraph 8.3, the First Minister’s comments and actions have prejudiced the energy consents process by compromising his impartiality regarding the Peterhead application. The First Minister’s public statements in support of the Peterhead application directly contravene the requirements of paragraph 8.10 of the Ministerial Code under which the First Minister should avoid making any statement on the merits of a planning application.

<sup>17</sup> Scottish Government response to FOI request, ‘FOI 1, part 1 (link above)’, p.88 and p.94

<sup>18</sup> Scottish Business News website: <https://scottishbusinessnews.net/decarb-scotland-conference-2024-envisions-a-future-where-mass-carbon-capture-is-the-norm/>

<sup>19</sup> See table above: ‘Meetings not recorded by the Scottish Government’

- reasonable to suggest that these briefings describe the view of the Scottish Government, not that of individual civil servants;
- b. The contents of these briefing notes are otherwise consistent with the minutes of the meetings and;
  - c. No evidence has been provided to suggest that Ministers rejected the briefings, requested changes, or spoke against their contents during the meetings in question.
2. The First Minister states that Michael Matheson MSP, then Cabinet Secretary for Net Zero and Energy, did not breach the Code when he issued a quote on an SSE press release (“*The innovative Peterhead CCGT Power Station is a fantastic example of how Scotland’s energy sector can make the transition to net zero*”) since his quote “does not speak directly to the application” and that he was not the “primary” decision maker with respect to the application. However:
- a. We contest the notion that Mr. Matheson’s statement didn’t support the planning application for a new power station at Peterhead and cannot conceive how it could be read otherwise.
  - b. We contend that a Cabinet Secretary providing a statement supporting a company in a press release about a specific development would be understood by any reasonable person to constitute that Cabinet Secretary, and indeed the Government of which they are a leading figure, backing that specific development, irrespective of its precise wording.
  - c. That Mr. Matheson was not the “primary” decision maker is irrelevant since this is not the test laid out in the Ministerial Code, which requires “any other Minister involved in the planning decision [*the extent of involvement is not specified*] must do nothing which might be seen as prejudicial to that process” (8.3). As such, Mr. Matheson can only be said to have not breached this clause if he had no role *whatsoever* in the decision making process for the Peterhead application, and this would seem highly improbable given the nature of the project proposed and his portfolio role as Cabinet Secretary for Net Zero, Energy and Transport.
  - d. As a Cabinet Secretary, Mr. Matheson held a more senior position in the Scottish Government than the Planning Minister, so Mr. Matheson’s support for the application would put additional pressure on the Minister.
3. Regarding the visit of Humza Yousaf MSP, then First Minister, to the existing SSE plant at Peterhead on 18<sup>th</sup> July 2023 (A&B viii), the First Minister states that Mr. Yousaf’s comments on an SSE press release were referring to a different policy issue. However, the First Minister undermines this point elsewhere in his response by stating the “delivery interdependencies” of the Acorn project and the Peterhead carbon capture proposal. Furthermore, we contend that any supportive quote by a First Minister, when given at the site of a proposed development and to the developers, would be interpreted by any reasonable person as a “public statement about the merits of a planning application that might be seen to put the Planning Minister under pressure” (8.10).
4. The First Minister does not address Mr. Yousaf’s comments on Twitter, his appearance in a promotional video for SSE, or the message given to other Ministers by Mr. Yousaf appearing at a photo opportunity wearing SSE branded clothing on 18<sup>th</sup> July 2023 (A&B viii).
5. The First Minister states that a Scottish Government briefing for the 18<sup>th</sup> July 2023 visit (A&B viii) stated that “there is a s36 planning application in on SSE’s new



Peterhead CCS plant with the Energy Consents Unit which [you] cannot comment on”. However, as previously provided, Gillian Martin MSP, Energy Minister responsible for the decision on the Peterhead application, was sent an email from Tom Thomson, Special Advisor to the First Minister, stating that the “focus” of the visit was to discuss “SSE proposals for CCS energy plant”. The meeting could hardly have this “focus” if the matter could not be discussed. It is also substantive that Ms. Martin was informed of the visit in advance and that Mr. Yousaf’s obvious public support for SSE and how he states he is “impressed with their plans for the future” would have prejudiced her decision making on Peterhead power station application.

6. The First Minister states that the Code was followed on 18<sup>th</sup> July 2023, claiming that a briefing note stated that “there is a s36 planning application in on SSE’s new Peterhead CCS plant with the Energy Consents Unit which [you] cannot comment on”. However:
  1. the First Minister also claims that being briefed is “a passive act”. The contents of such briefings is either pertinent or not, they cannot be both at the same time;
  2. the briefing being referred to has not been provided to Friends of the Earth Scotland despite us requesting relevant documents on three occasions under the terms of the Freedom of Information Act:
    - i. In a letter sent 27<sup>th</sup> September 2023 by Alex Lee – in its response the Scottish Government<sup>20</sup> provided other documents relevant to the visit but not the briefing mentioned by the First Minister;
    - ii. In a letter sent 27<sup>th</sup> February 2024 by Malachy Clarke requesting any papers relevant to the visit – the Scottish Government responded by claiming it “does not hold the information you have requested”;<sup>21</sup>
    - iii. In a letter sent 28<sup>th</sup> March 2024 by Ric Lander requesting correspondence relevant to the developer – the request was refused;<sup>22</sup>
    - iv. Given the above, we are resigned to the conclusion that either the briefing is being intentionally withheld or does not exist.
7. Therefore, we would like to pursue our complaint regarding all 11 breaches listed in A&B.



### C. Meetings not recorded by the Scottish Government

Paragraph 4.23 of the 2023 Ministerial Code states that “a private secretary or official should be present for all discussions relating to government business. Private offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded...” and (Paragraph 4.24) that “if Ministers meet external organisations or

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<sup>20</sup> Documents published by the Scottish Government in 2023 in response to a Freedom of Information Request ‘Annex B’. Source: <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2024/03/foi-202300378265/documents/eir-202300378265---information-released---annex-b/eir-202300378265---information-released---annex-b/govscot%3Adocument/EIR%2B202300378265%2B-%2BInformation%2BReleased%2B-%2BAnnex%2BB.pdf>

<sup>21</sup> Letter from the Scottish Government to Malachy Clarke, 26<sup>th</sup> March 2024. Source: [https://www.whatdotheyknow.com/request/documentation\\_relevant\\_to\\_meetin\\_2/response/2602116/attach/3/EIR%20202400401637%20Response.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/documentation_relevant_to_meetin_2/response/2602116/attach/3/EIR%20202400401637%20Response.pdf?cookie_passthrough=1)

<sup>22</sup> Letter from the Scottish Government to Ric Lander, 26<sup>th</sup> April 2024. Source: [https://www.whatdotheyknow.com/request/the\\_first\\_ministers\\_written\\_corr/response/2638116/attach/3/Response%20202400407130.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/the_first_ministers_written_corr/response/2638116/attach/3/Response%20202400407130.pdf?cookie_passthrough=1)

individuals and find themselves discussing official business without an official present... any significant content should be passed back to their Private Offices... who should arrange for the basic facts of such meetings to be recorded...”

**Ministers have breached the Ministerial Code by meeting with the developers without keeping proper records.**

On the following 16 occasions the Lobbying Register shows that meetings took place between the developers and Scottish Ministers, but Scottish Government records are missing or not available.

All 16 incidents are missing from the published list of *Ministerial engagements, travel and gifts*.<sup>23</sup> Three of these incidents involve discussion of national energy policy but no records were held as they were erroneously reported as constituency business and on a further two incidents the Scottish Government said no records were kept for unknown reasons.

<b>Date</b>	<b>Minister</b>	<b>Company and lobbyists</b>	<b>Location</b>	<b>Nature of breach</b>	<b>Sources<sup>24</sup></b>
<b>18/03/2022</b> <b>(i)</b>	John Swinney MSP (Cabinet Secretary for Finance and the Economy, Cabinet Secretary for Covid Recovery, Deputy First Minister)	SSE: Gregor Alexander, Niall Murphy	Inveralmond House 200 Dunkeld Road Perth	Meeting is not listed on "Ministerial engagements, travel and gifts", FOI response states "these were held in... respective capacities as Members of the Scottish Parliament" however the Lobbying Register states that SSE's "project plans in Scotland." were discussed	Lobbying Register; Ministerial engagements, travel and gifts; Freedom of Information request
<b>30/05/2022</b> <b>(ii)</b>	Ivan McKee MSP (Minister for Business, Trade, Tourism and Enterprise)	Equinor: David Cairns	Dakota Hotel Glasgow 179 West Regent Street Glasgow	Meeting is not listed on "Ministerial engagements, travel and gifts", details of meeting were published in response to an FOI request	Lobbying Register; Ministerial engagements, travel and gifts; Freedom of Information request
<b>07/10/2022</b> <b>(iii)</b>	Richard Lochhead MSP (Minister for Just Transition, Employment and Fair Work)	SSE: Kate Wallace Lockhart	SNP Party Conference 2022, The Event Complex Aberdeen	Meeting is not listed on "Ministerial engagements, travel and gifts", FOI response states "these were held in... respective capacities as Members of the Scottish Parliament" however Lobbying Register lists	Lobbying Register; Ministerial engagements, travel and gifts; Freedom of Information request

<sup>23</sup> Scottish Government, 'Ministerial engagements, travel and gifts', link above

<sup>24</sup> Sources are detailed in the accompanying spreadsheet, tab 2



				the event with Mr Lochhead in his Ministerial position.	
<b>16/12/2022 (iv)</b>	Angus Robertson MSP (Cabinet Secretary for the Constitution, External Affairs and Culture)	SSE: Gregor Alexander, Gordon Bell, Niall Murphy	7 Castle Street Edinburgh	Meeting is not listed on "Ministerial engagements, travel and gifts", FOI response states "these were held in... respective capacities as Members of the Scottish Parliament" however Lobbying Register records discussions on SSE plans to invest in Scotland.	Lobbying Register; Ministerial engagements, travel and gifts; Freedom of Information request
<b>16/03/2023 (v)</b>	Richard Lochhead MSP (Minister for Just Transition, Employment and Fair Work)	SSE: Niall Murphy	CMSLLP, Saltire Court, Edinburgh	Meeting is not listed on "Ministerial engagements, travel and gifts", details of meeting were published in response to an FOI request	Lobbying Register; Ministerial engagements, travel and gifts; Freedom of Information request
<b>13/04/2023 (vi)</b>	Richard Lochhead MSP (Minister for Small Business, Innovation, Tourism and Trade)	SSE: Kirstanne Land, Cath Swan	Ugie Hotel	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>08/06/2023 (vii)</b>	Maree Todd MSP (Minister for Social Care, Mental Wellbeing and Sport)	SSE: Greg Clarke, Kirstanne Land, Rebecca Gay	Scottish Parliament, Garden Lobby	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>09/06/2023 (viii)</b>	Mairi Gougeon MSP (Cabinet Secretary for Rural Affairs, Land Reform and Islands)	SSE: Christianna Logan, Tony Scott, Calum Grant, Kirstanne Land	Dickson Hall, Laurencekirk	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>12/06/2023 (ix)</b>	Mairi Gougeon MSP (Cabinet Secretary for Rural Affairs, Land Reform and Islands)	SSE: Niall Murphy	Seagreen Offshore Wind Farm	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>19/06/2023 (x)</b>	Mairi Gougeon MSP (Cabinet Secretary for Rural Affairs, Land Reform and Islands)	SSE: Kirstanne Land, Calum Grant,	140 Castle Street, Forgar	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register

		Louise Anderson			
<b>26/06/2023 (xi)</b>	Màiri McAllan MSP (Wellbeing Economy, Net Zero and Energy)	SSE: Niall Murphy, Morven Smith, Stuart Hood	Healthy Valleys, Lanark	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>15/07/2023 (xii)</b>	Emma Roddick MSP (Minister for Equalities, Migration and Refugees)	SSE: Christianna Logan, Kirstanne Land, David Boyland	Bught Park Pitches, Inverness	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>20/07/2023 (xiii)</b>	Neil Gray MSP (Cabinet Secretary for Wellbeing Economy Fair Work and Energy)	SSE: Heather Donald, Jamie Maxton, Corinna Scholes	Viking Wind Farm, Shetland	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>07/09/2023 (xiv)</b>	Neil Gray MSP (Cabinet Secretary for Wellbeing economy, Fair Work and Energy)	SSE: Ben Walker	Royal Botanic Garden, Edinburgh	Meeting is not listed on "Ministerial engagements, travel and gifts"	Ministerial engagements, travel and gifts; Lobbying Register
<b>15/09/2023 (xv)</b>	Gillian Martin MSP (Minister for Energy)	SSE: Greg Clarke, Kirstanne Land	Colpy Business Park, Oldmeldrum	Meeting is not listed on "Ministerial engagements, travel and gifts", FOI response states "we have no records of meetings having taken place"	Lobbying Register; Ministerial engagements, travel and gifts; Freedom of Information request
<b>01/02/2024 (xvi)</b>	Neil Gray MSP (Cabinet Secretary for Wellbeing Economy, Fair Work and Energy)	Peterhead Carbon Capture Power Station	Decarb Scotland conference, Murrayfield	Meeting is not listed on "Ministerial engagements, travel and gifts", FOI response states "we have no records of meetings having taken place"	Press Story; Freedom of Information request; Ministerial engagements, travel and gifts;

We would like to draw particular attention to the meeting between Gillian Martin MSP, who is responsible for overseeing the Energy Consent process, and SSE. The Lobbying Register shows that Martin met Greg Clarke and Kirstanne Land of SSE at Colpy Business Park, Oldmeldrum, Aberdeenshire on 15<sup>th</sup> September 2023.<sup>25</sup> This shows that the developers for the

<sup>25</sup> Lobbying Register entry:

<https://www.lobbying.scot/SPS/InformationReturn/SearchInformationReturnDetail/45605?AspxAutoDetectCookieSupport=1>

Peterhead application met with the Minister responsible for the Energy Consents process and yet the Scottish Government took no records of the meeting.

A further four meetings took place between Scottish Government officials and developers. As no Minister was present they do not represent a breach of the Ministerial Code but the absence of records being kept between major companies such as SSE and Equinor and the Scottish Government is a serious concern given that these companies are pursuing a major planning application.

Date	Scottish Government official	Company and lobbyists	Location	Missing records	Source <sup>26</sup>
16/03/2022 (xvii)	John McFarlane (Special Adviser)	SSE: Niall Murphy, Jamie Maxton	Video conference	FOI response states "we have no records of meetings having taken place"	Lobbying Register, Freedom of Information request
14/09/2022 (xviii)	John McFarlane (Special Adviser) and Harry Huyton (Special Adviser)	SSE: Niall Murphy, Greg Clarke, Jamie Maxton	Video conference	FOI response states "we have no records of meetings having taken place"	Lobbying Register, Freedom of Information request
03/11/2022 (xix)	Liz Lloyd (Special Adviser)	SSE: Alistair Phillips-Davies, Glenn Barber	COP27, Blue Zone, Sharm El-Sheikh None	FOI response states "we have no records of meetings having taken place"	Lobbying Register, Freedom of Information request
05/10/2023 (xx)	Calum McCaig - Special Adviser	SSE: Niall Murphy, Jamie Maxton, Greg Clarke	Scottish Parliament	FOI response states "we have no records of meetings having taken place"	Lobbying Register, Freedom of Information request

## C-2. Addressing the response from the First Minister regarding section C of the original complaint:

1. In his letter, the First Minister claims that for 12 out of 16 of these instances (C i, iii, iv, vi, vii, viii, ix, x, xi, xii, xiv, xv) records did not need to be kept because “these engagements are clearly stated to be have taken place in either a party political or constituency capacity” and that it is not a requirement to record these meetings “unless the discussion turned to official business”. This ignores the substance of our complaint: that it is likely that official business was raised, that there is no evidence to prove it was not, and that the lack of record keeping by Ministers, irrespective of what capacity they later asserted they were acting under, undermines trust in the decision making process for the Peterhead power station planning application. We are particularly concerned about the meeting between Gillian Martin MSP and SSE which took place on 15<sup>th</sup> September 2023 (C xv): given her central role as Energy Minister

<sup>26</sup> Sources are detailed in the accompanying spreadsheet, tab 2

and minister responsible for the decision in the s36 process, any meetings between her and interested parties should be recorded, irrespective of her own view on the specific purpose of the meeting.

2. The FM claims that for 4 out of 16 of the instances we raised, meetings were included in the record of ‘Ministerial engagements, travel and gifts’, contrary to our claim. We counter:
  - a. SSE report they met Ivan McKee MSP on 30<sup>th</sup> May 2022 (C ii) but the record of *Ministerial engagements, travel and gifts* merely states ‘EY Attractiveness / Survey deep dive’ and the ‘guest list’ tab does not list the event. The published records are therefore inadequate and do not indicate to the public that lobbying may be taking place.
  - b. SSE report that they met Richard Lochhead MSP on 16<sup>th</sup> March 2023 (C v) but the record of *Ministerial engagements, travel and gifts* makes no mention of this. A meeting with Tracy Black, Director, CBI Scotland is included. The record is either incorrect or at best misleading.
  - c. SSE report that they met Neil Gray MSP, then Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, on 20<sup>th</sup> July 2023 (C xiii) but the record of *Ministerial engagements, travel and gifts* only lists ‘Viking Wind Farm’. This does not indicate to the public that SSE may be present and so is misleading.
  - d. The conference attended by Neil Gray MSP on 1<sup>st</sup> February 2024 (C xvi) is included in the record of *Ministerial engagements, travel and gifts* and we are happy to withdraw this allegation.
3. Therefore, we would like to pursue our complaint regarding 15 of the 16 breaches listed in C.



#### **D. Ministers meeting with developers and not objectors**

Paragraph 8.3 of the Ministerial Code sets out examples of actions that might be viewed as prejudicial to the planning process. Paragraph 8.3(b) gives a specific example of how Ministers might prejudice the planning process as follows:

*Meeting the developer or objectors to discuss the proposal, but not meeting all parties with an interest in the decision. The Planning Minister, or any other Minister involved in the planning decision, should only hold such a meeting if it is possible to meet **all** interested parties in respect of a particular proposal or, as an absolute minimum, to offer all parties the opportunity of such a meeting...*

**Ministers have breached the Ministerial Code by showing a general pattern of favour towards the developers, meeting repeatedly with them during the planning period whilst neglecting objectors.**

The records above show that Ministers were briefed to discuss, or spoke publicly about, the proposed gas fired power station at Peterhead on at least 10 occasions with the developers. These are listed in the previous section.

Furthermore, the sheer quantity of meetings with developers represents a lack of fairness towards objectors. According to Scottish Government records and the Lobbying Register the Scottish Government met with SSE on 50 occasions and Equinor on 11 occasions during the

period of 18<sup>th</sup> February 2022 to 31<sup>st</sup> December 2023. This represents the Scottish Government meeting with the developers more than once a fortnight at a time when the planning process was live.<sup>27</sup>

Five individuals and organisations have submitted objections to the planning application for the new gas power station at Peterhead<sup>28</sup>, as well as the Scottish Environmental Protection Agency (SEPA). Friends of the Earth Scotland, one of the objectors, have met Scottish Ministers 7 times and Special Advisors 3 times, far less than the 61 occasions in which the Scottish Government met the developers in the same period.<sup>29</sup>

When representatives of Friends of the Earth Scotland raised the Peterhead power station application during Scottish Government meetings, they were told that Ministers could not discuss it with them.

Objectors have requested opportunities to discuss the application with the Scottish Government and have been repeatedly rebuffed:

- Gillian Martin MSP, Minister for Energy, refused to meet with Friends of the Earth Scotland (8<sup>th</sup> April 2024) stating that she is “unable to comment on the Peterhead Power Station planning application” as it is “live”.<sup>30</sup>
- Gillian Martin MSP, Minister for Energy, in a letter dated 16<sup>th</sup> April 2024 to Shona Robison of Dundee, refused a request for a meeting and states that “it would not be appropriate to comment on a live planning application”, whilst going on to explain the Scottish Government’s support for the technology proposed at the site.<sup>31</sup>

## **D-2. Addressing the response from the First Minister regarding section D of the original complaint:**

1. The First Minister states that “[FoES] do not provide any evidence to suggest that any of the discussions between Scottish Ministers and the developers over the period the application has been live have been to discuss the application” however, such evidence is provided in section A&B, i-x, in our original complaint, detailed above.
2. The First Minister states that “SSEN Transmission is an entirely separate business” and that therefore SSEN Transmission would not be lobbying in support of the s36 application. However:
  - a. The lobbying register does not distinguish meetings taken by SSEN Transmission, instead SSE Plc. complete their lobbying register returns as a single entity incorporating engagements carried out for and by their various divisions.
  - b. SSE Plc. present financial results as a group which incorporated SSEN Transmission and their other divisions.<sup>32</sup>

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<sup>27</sup> A list of these meetings, extracted from the Lobbying Register, is provided in the accompanying spreadsheet, tab 1.

<sup>28</sup> Scottish Government energy consents website:

<https://www.energyconsents.scot/ApplicationDetails.aspx?cr=ECU00003433&T=4>

<sup>29</sup> A list of these meetings, extracted from the Lobbying Register, is provided in the accompanying spreadsheet, tab 3.

<sup>30</sup> Letter from Gillian Martin MSP to Malachy Clarke, 8<sup>th</sup> April 2024, included in accompanying documents

<sup>31</sup> Letter from Gillian Martin MSP to Shona Robison, 16<sup>th</sup> April 2024, included in accompanying documents

<sup>32</sup> SSE Plc. ‘Investors’ webpage: <https://www.sse.com/investors/>

- c. In meetings entered into the Lobbying Register SSE stated that they were represented by staff who are responsible for matters across the company's various divisions. For example, on four occasions they were represented by Alistair Phillips-Davies, CEO of SSE Plc, and on 10 occasions they were represented by Niall Murphy, Public Affairs Manager, SSE Plc.<sup>33</sup> It is unreasonable to expect that lobbyists with responsibility across company divisions will restrict their comments to matters pertaining to individual divisions.
  - d. In general, the First Minister has not addressed our complaint that Ministers have met developers but not with other parties with an interest in the decision, as the Ministerial Code requires.
3. Therefore, we would like to pursue our complaint regarding the breach listed in D.



We look forward to the progress of this investigation.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Florence Garabedian'.

*Florence Garabedian*  
*Interim CEO, Friends of the Earth Scotland*

A handwritten signature in black ink, appearing to read 'Caroline Rance'.

*Caroline Rance*  
*Manager, Fossil Fuel Transition*

A handwritten signature in black ink, appearing to read 'Ric Lander'.

*Ric Lander*  
*Manager, Research and Development*

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<sup>33</sup> Alistair Phillips-Davies met the Scottish Government on 3/5/2022, 3/11/2022, 7/12/2022 and 30/5/2023. Niall Murphy met the Scottish Government on 16/3/2022, 18/3/2022, 7/9/2022, 14/9/2022, 16/12/2022, 16/3/2023, 12/6/2023, 26/6/2023, 11/9/2023 and 5/10/2023. Details of these meetings are included in the attached spreadsheet.



Friends of the Earth Scotland

5 September 2024

Accompanying documents included in the original complaint:

- (i) Spreadsheet of meetings including three tabs: all meetings relevant to breaches of the Ministerial Code; meetings where records are missing; FoES meetings with the Scottish Government (for comparison)
- (ii) Letter from Gillian Martin MSP to Malachy Clarke, 8<sup>th</sup> April 2024
- (iii) Letter from Gillian Martin MSP to Shona Robison, 16<sup>th</sup> April 2024
- (iv) FOI 1: Meetings between the Scottish Government, SSE and Equinor submitted by Ric Lander (SG ref 202400396587)
- (v) FOI 2: Meetings between the Scottish Government, SSE, Equinor, Ian Wood and True North submitted by Malachy Clarke (SG ref 202400401637)
- (vi) FOI 3: Meetings between the Scottish Government, SSE, NECCUS and Equinor submitted by Ric Lander (SG ref 202400407153)

Additional accompanying documents:

- (vii) Letter from John Swinney MSP, First Minister, to Florence Garabedian, 21<sup>st</sup> August 2024