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Mr George Greenwood  
By email at: [George.Greenwood@bbc.co.uk](mailto:George.Greenwood@bbc.co.uk)

Our ref: Fol/17/01418  
12 July 2017

Dear Mr. Greenwood

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

Thank you for your request dated 23 June 2017 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### Your request

You asked for the following information:

*“Please state what preparatory work has been completed by the Scottish government since June 8th 2017 towards the holding of a new referendum on Scottish Independence.*

*This might include any reports completed by the government, or meetings held by ministers on the issue of independence preparations.*

*Please provide a copy of these reports or the minutes of these meetings.”*

#### Response to your request

A discussion took place at the meeting of the Scottish Cabinet on 20 June 2017 reflecting on the implications of the UK general election in relation to a referendum on independence. While our aim is to provide information whenever possible, in this instance we are unable to provide the minutes of that discussion because exemptions under section 29(1)(b) (Ministerial Communications) and section 30(a) (Collective Responsibility) of FOISA apply to that information. The reasons why these exemptions apply are explained in the Annex to this letter.

No other preparatory work was completed by the Scottish Government between the dates of 8 and 23 June 2017.

However, on 27 June, the First Minister made a statement to the Scottish Parliament on Scotland's future. The full text of the First Minister's speech can be found in the Parliament's Official Report

(<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11035&i=100808>)

More recently, on 29 June 2017, the Scottish Government published responses to the recent consultation on a draft referendum bill, along with an independent analysis (<http://www.gov.scot/Publications/2017/06/5860>) and the Scottish Government's response (<http://www.gov.scot/Publications/2017/06/5373>).

### Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to:

Head of FOI Unit,  
2W, St Andrew's House,  
Regent Road,  
Edinburgh,  
EH1 3DG

or email [foi@gov.scot](mailto:foi@gov.scot).

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Yours sincerely



Emma Lopinska

## REASONS FOR NOT PROVIDING INFORMATION

### Exemptions apply, subject to the public interest test

Exemptions under section 29(1)(b) (Ministerial Communications) and section 30(a) (Collective Responsibility) of FOISA apply to some of the information you have requested. These exemptions recognise the need to protect the convention of collective responsibility and allow Ministers some private space for discussion.

Paragraph 2.1 of the Scottish Ministerial Code provides that “the privacy of opinions expressed and advice offered within the Government should be maintained” at all times.

The minutes of Cabinet meetings record collective discussion in the private space which Ministers need to reach agreed positions.

The weekly meeting of the Scottish Cabinet is the highest decision-making forum within the Scottish Government, and it follows that all information considered by Cabinet must be handled with great care.

Properly functioning Cabinet processes are generally recognised to be of vital public interest: Cabinet government is based on the principle of collective responsibility, which the *Scottish Ministerial Code*, and the UK Ministerial Code, define in the following terms:

*“The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained. ... . The internal processes through which a Government decision has been made should not normally be disclosed.”*

(*Scottish Ministerial Code*, 2016 edition, paragraphs 2.1 and 2.4)

The exemptions under sections 29(1)(b) and 30(a) of FOISA are subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemptions. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in maintaining collective responsibility and in allowing Ministers a private space within which policy positions can be explored and refined, until the Government as a whole can reach a decision that is sound and likely to be effective. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues both between Ministers, which in turn will undermine the quality of the policy- and decision-making processes, which would not be in the public interest.