



Scotland Office

An Oifis Albannach

Mr Michael Bimmler

Mail to:

request-395297-0b78b440@whatdotheyknow.com

Dover House
Whitehall
London
SW1A 2AU

Website: www.gov.uk/scotland-office

Our Ref: DB 1221

7 April 2017

Dear Mr Bimmler,

Thank you for your email of 15 March 2017 to the Scotland Office regarding your request for information under the Freedom of Information Act (the “**Act**”). You requested:

‘any internal note, paper, advice, memorandum, briefing or ministerial submission held in your records which discusses the Scottish Government’s legal powers to hold a referendum on Scottish independence, whether binding or advisory, without asking the UK Government for permission to do so.’

You asked us to consider files from the last 5 years.

I am writing to inform you that the Scotland Office is unable to comply with your request. Section 12 of the Act relieves public authorities of the duty to comply with a request for information if the cost of dealing with it would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government this is set at £600. This represents the estimated cost of one person spending 3½ working days in determining whether the Department holds the information, and locating, retrieving and extracting it.

We have carried out a sampling exercise and established that it would still take well in excess of 24 hours to locate the information relevant to your request. The way our records are filed does not make the exact information you have requested readily retrievable. The period covered by your request is long, and one way to refine your request would be to narrow the period it covers. I would suggest asking for advice in a more recent period, due to the way our files are organised.

However, even were your request refined sufficiently for us to locate the information, it is unlikely we would be able to provide you with the requested information. Under section 42 of the Act we cannot disclose any information that is covered by legal privilege. This prevents us from sharing any communications with a professional legal advisor for the purposes of obtaining legal advice. We anticipate the information you have requested would fall into this category.

Under section 16 of the Act, public authorities have a duty to provide advice and assistance, so far as it would be reasonable to expect them authority to do so, to persons who propose to make, or have made, requests for information to it.

That duty is described in the Code of Practice issued under section 45 of the Act (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf) .

Having regard to that duty you may find it helpful to know that the government carried out a consultation on a range of issues relevant to holding an independence referendum. The consultation considered the legal powers to hold a referendum and will be a useful source for information you are looking for. Responses to the consultation, including the government's response, can be found at:

<http://webarchive.nationalarchives.gov.uk/20130130150421/http://www.scotlandoffice.gov.uk/scotlandoffice/17088.523.html>

If you are unhappy with the service you have received in relation to your request and you wish to make a complaint or request a review of our decision, you should write to:

FOI Officer
1 Melville Crescent
EDINBURGH
EH3 7HW

If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
CHESHIRE
SK9 5AF

If you have any queries about this response, please contact me.

Yours sincerely,

Guy Arnold
Scotland Office