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Paul Temple
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Our Reference: 202200281715

3 March 2022

Dear Paul Temple,

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

Thank you for your request dated 17 February 2022 under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

I request the cabinet briefing paper by Finance Secretary John Swinney that is mentioned in this article.

<https://www.heraldscotland.com/news/13094979.leaked-paper-shows-snp-fears-cost-benefits/?ref=twtrrec>

Response to your request

While our aim is to provide information whenever possible, in this instance we are unable to provide the information you have requested because exemptions under Section 29(1)(b) (Ministerial communications) and Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) of FOISA applies to that information. The reasons why these exemptions apply are explained below.

Section 29(1)(b) – Ministerial communications

An exemption under section 29(1)(b) of FOISA (Ministerial communications) applies to the information requested because it relates to communications between Scottish Ministers.



While this paper was produced almost 10 years ago, the content relates to active policy work which is still being undertaken by the Scottish Government on the matter of Scottish independence and the ability to maintain a private space for the Scottish Cabinet to consider such matters remains essential.

This exemption is 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 exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. 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 allowing Ministers a private space within which matters relating to the Scottish Government's policy on independence can be explored and refined, until the Government as a whole can adopt a policy 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 between Ministers, which in turn will undermine the quality of the policy and decision making process.

Section 30(b)(ii) – the free and frank exchange of views for the purposes of deliberation

An exemption under section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) applies to the information that you have requested.

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. Cabinet papers are essential elements which support and assist 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 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, 2018 edition, paragraphs 2.1 and 2.4*)

Cabinet papers are invariably produced on the assumption that they will not be disclosed until a significant amount of time has elapsed. While this paper was produced almost 10 years ago, the content relates to active policy work which is still being undertaken by the Scottish Government on the matter of Scottish independence and the ability to maintain a private space for the Scottish Cabinet to consider such matters remains essential. Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) recognises the need to allow Ministers some private space for discussion.

This exemption is 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 exemption. We have found that, on balance, the public interest lies in favour of

upholding the exemption.

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 the process of achieving collective responsibility within a private space within which policy positions can be explored and refined by Ministers in order that the Government, as a whole, can reach a final decision. 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 between Ministers, which in turn will undermine the quality of the policy/decision-making process.

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:

David Rogers,
Director of Constitution and Cabinet,
4N04, St Andrew's House,
Regent Road,
Edinburgh,
EH1 3DG

or email David.Rogers@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

Case handler
Constitutional Futures Division