



Paul Temple  
request-833869-0b076379@whatdotheyknow.com

Our Reference: 202200281715  
Your Reference: request-833869-0b076379

21 April 2022

Dear Paul Temple,

Further to my letter of 1 April 2022, I have now completed my review of our response to your request 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>

### Your request for review

I am writing to request an internal review of Scottish Government's handling of my FOI request 'secret cabinet briefing paper by Finance Secretary John Swinney'.

Given as you accept this covers papers over 10yrs ago. The papers concerned relate to the failed referendum of 2014. Therefore should be disclosed as the response is now trying to relate those papers and advice to another referendum.

If the request was on 20th September 2014 there would be no reason to withhold. As such there is no reason to withhold old information.

### Review Decision

I have been asked to look at your request afresh, to decide whether the original response should be confirmed, with or without modifications, as appropriate, or that a fresh decision should be substituted.

Having undertaken a review of the information previously withheld, I am satisfied that exemptions under section 29(1)(b) and section 30(b)(ii) would continue to apply for the reasons set out in our initial



response.

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.

Delivering the Programme for Government commitment to prepare a detailed prospectus for an independent Scotland requires us to reassess options and evidence for propositions previously articulated. The Cabinet Paper covers matters which relate to the prospectus as a whole, as well as to elements of it. These continue to be relevant to current policy development work.

Having given further consideration to the information requested, I have also determined that an exemption under section 30(a) would apply to the information previously withheld.

An exemption under section 30(a) of FOISA (convention of collective responsibility of Scottish Ministers) applies to all of the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially the convention of the collective responsibility of Scottish Ministers for the Scottish Government's policy on delivering the Programme for Government commitment to prepare a detailed prospectus for an independent Scotland. Government in Scotland, as in the rest of the UK, has long worked under the convention that Ministers are collectively responsible for policy and its delivery. Collective responsibility requires collective discretion, and ensures that Ministers can express their views frankly in internal discussion of an issue while maintaining a united front once decisions have been reached. Disclosing communications between individual Ministers and/or Cabinet papers which record their views would prejudice substantially the maintenance of the convention.

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 collective responsibility for the Scottish Government's policy on delivering the Programme for Government commitment to prepare a detailed prospectus for an independent Scotland, once a settled policy position has been reached. Disclosure of these internal discussions between Ministers would be likely to have the effect of undermining the Government's position on preparing a prospectus for an independent Scotland, and thus the effectiveness of the policy, which would not be in the public interest.

I have therefore concluded that the original decision should be confirmed with one modification to apply section 30(a) in addition to section 29(1)(b) and section 30(b)(ii).

### **Your right to appeal**

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at: <https://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>

You can also contact the Commissioner at:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

Case Handler  
**Constitutional Futures Division**

