

This Annex contains 4 items of information, provided as extracts. They are provided as extracts because they are from emails and documents containing information outside the scope of your request.

Item 1:

Email exchange between a civil servant and the Cabinet Secretary for Constitution, Europe and External Affairs discussing the draft of a letter to be sent from Scottish Government officials to the Electoral Commission. Please note, the only information within scope of your request in the attached letters referenced is the same draft text discussed in this email exchange.

From: [Redacted] On Behalf Of Cabinet Secretary for Constitution, Europe and External Affairs

Sent: 17 March 2020 10:17

To: [Redacted] Cabinet Secretary for Constitution, Europe and External Affairs
<CabSecCEAEA@gov.scot>

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Curtis PS (Penelope) [Redacted] Hynd JS (James) [Redacted]; Thomson KAL (Ken) (Director-General) [Redacted]; Rogers D (David) (Constitution and Cabinet Director) [Redacted]; Kellet M (Michael) (Constitution and Cabinet) [Redacted]; Crawford E (Ewan) [Redacted]; Lloyd E (Elizabeth) [Redacted]; Permanent Secretary [Redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; First Minister <firstminister@gov.scot>; [Redacted]

Subject: RE: Official sensitive- response to Electoral Commission

Hi [Redacted]

Thanks for this. Mr Russell has suggested using letter one, but cutting out the para that says

[Redacted]

Then at the end replace it with this:

“Of course we are also mindful of the wider context in relation to COVID19 at this particular time. Accordingly if the Electoral Commission agrees to undertake testing, as we believe it should, we would then concur with any decision by the Commission to postpone actual testing until such time as it was appropriate to do so in the light of current public health concerns and the need to avoid unnecessary contact for the duration of the Coronavirus crisis.”

Ewan / Liz – Mr Russell has asked if you are happy with this and if the FM should see it before it is issued.

Thanks,

[Redacted]

From: [Redacted]

Sent: 16 March 2020 16:31

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Curtis PS (Penelope) [Redacted]; Hynd JS (James) [Redacted]; Thomson KAL (Ken) (Director-General) [Redacted]; Rogers D (David) (Constitution and Cabinet Director) [Redacted]; Kellet M (Michael) (Constitution and Cabinet) [Redacted]; Crawford E (Ewan) [Redacted]; Lloyd E (Elizabeth) [Redacted]; Permanent Secretary [Redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; First Minister <firstminister@gov.scot>; [Redacted]

Subject: Official sensitive- response to Electoral Commission

Dear [Redacted]

Please see attached two draft letters, from officials to the Electoral Commission, for consideration and clearance. These offer options on how to respond to the recent UKG correspondence on question testing. The Electoral Commission board is due to meet on Wednesday 18th to take a decision on question testing so the response needs to issue before then.

The letters give two options to respond.

[Redacted]

Option two takes another approach and sets out that work on question testing will be delayed due to COVID 19. An alternative letter is attached, which includes the following line

“Due to the impact of COVID 19, we will not pursue work on question testing at this time”.

[Redacted]

Best wishes,

[Redacted]

Item 2:

From an internal Scottish Government document, sent from Director of Constitution and Cabinet to Ministers on 25 March 2020.

**OFFICIAL – SENSITIVE: CONSTITUTION AND CABINET DIRECTORATE:
REPRIORITISATION FOR COVID-19**

PAUSING

Constitutional change

- Referendum – mothballing work on Framework Act guidance, question-testing, trigger bill
- Constitutional Convention
- New Scotland publications
- Independence policy development

Item 3:

From an internal Scottish Government document titled “COVID-19: PORTFOLIO PRIORITIES”, sent from DG Constitution and External Affairs to Ministers and civil servants on 23 March 2020

Work on independence referendum has been paused, with the teams concerned transferred to Covid work,

Item 4:

From a briefing document sent on 23 April 2020 from civil servants to the Cabinet Secretary for Constitution, Europe and External Affairs for his appearance at the Scottish Parliament Covid Committee.

Referendum

- Work on preparing for an independence referendum this year has been paused. The Electoral Commission will consider our request for question testing after the coronavirus situation is sufficiently resolved.

REASONS FOR NOT PROVIDING INFORMATION

Section 29(1)(a) – formulation or development of government policy

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation of the Scottish Government's policy on question testing for a future independence referendum.

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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on question testing will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

Section 30(b)(i) – free and frank provision of advice

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on question testing for a future independence referendum will substantially inhibit the provision of such advice in the future, particularly because these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as Scotland's constitutional future.

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 a private space within which officials can provide full and frank advice to Ministers, as part of the process of exploring and refining the Government's policy position on question testing, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.

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

An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions on question testing for a future independence referendum will substantially inhibit such discussions in the future, particularly because these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as Scotland's constitutional future.

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 and officials a private space within which to explore and refine the Government's policy position on question testing, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable 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 and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.

Section 38(1)(b) - personal information

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party (i.e. names/contact details of individuals), and disclosing it would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.