

Document 1

From: [redacted]
Sent: Tue 27/10/2020 15:16
To: [redacted]
Subject: RE: FOI response on question assessment

Okay, we chat early next week. Monday is rubbish for me but thereafter mainly ok.

[redacted]

From: [redacted]
Sent: 26 October 2020 13:58
To: [redacted]
Subject: RE: FOI response on question assessment

I think meeting was too formal a word! I was meaning the call about the call if you see what I mean?

From: [redacted]
Sent: 26 October 2020 13:46
To: [redacted]
Subject: RE: FOI response on question assessment

Yes, but could we talk about what we are going to talk about first on the phone. Perhaps later today?

[redacted]

From: [redacted]
Sent: 26 October 2020 13:44
To: [redacted]
Subject: FW: FOI response on question assessment

This reminded me I owe you an update [redacted] if we set a meeting for early next week would that be ok?

From: [redacted]
Sent: 26 October 2020 12:59
To: [redacted] Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [redacted]
Subject: FOI response on question assessment

Hi Penny / [redacted]

Hope all is well with you.

I just wanted to make you aware that we have received an FOI request in regard to the question assessment request. The request and our response are below. They

haven't requested any correspondence, just confirmation of facts, so we won't be releasing any documentation.

As you will see, it's fairly straightforward and I intend to get this issued tomorrow. However, if you do have any questions / concerns then please let me know asap.

Thanks

[redacted]

Request

It was reported on 09/02/2020 in The National newspaper that the Scottish Government had made a submission to the Electoral Commission (EC) regarding re-testing the question for a second Scottish independence referendum with a response expected from the EC in about three months.

See here: <https://www.thenational.scot/news/18221767.electoral-commission-retest-indyref-ballot-question/>

I am unable to find any reference to this on your website.

- 1. Please can you confirm that around February 2020, the Scottish Government asked the Electoral Commission to re-test the question.**
- 2. Please supply the information as to what the EC has done to re-test the question.**
- 3. Please supply the feedback / assessment of the re-testing of the question.**
- 4. Please can you explain why no update has been published on your website till date?**

Our response is as follows:

We hold some of the information you have requested.

As you are aware, on 31 January 2020 Nicola Sturgeon gave a speech in which she said that she would ask the Electoral Commission to 're-test the question 'Should Scotland be an independent country?'. Further details of that speech are available at: <https://www.snp.org/nicola-sturgeons-statement-on-scotlands-future/#>

I can confirm that the Electoral Commission received a formal request from the Scottish Government to re-test the question on 5 February 2020. This request was made by Michael Russell MSP, then Cabinet Secretary for Government Business and Constitutional Relations (now Cabinet Secretary for the Constitution, Europe and External Affairs).

The Commission's Board considered the request for advice and assistance at its meeting of 18 March 2020. It was noted at that meeting that were the Commission to agree to act on the request, the work could not presently commence as a

consequence of the Covid-19 pandemic as focus groups with voters could not be safely undertaken.

In March 2020 the Scottish Government indicated that it had paused work on preparing for an independence referendum as a result of the Covid-19 pandemic and that it did not wish the Commission to undertake testing of a referendum question until public health circumstances permitted such activity. Press coverage of this statement is available at: <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-51944044>

As a result of the above, the Commission has not commenced any work to date to re-test the Scottish independence referendum question.

[redacted]Electoral Commission Scotland

The Electoral Commission

[redacted]

electoralcommission.org.uk

[redacted]

Document Two

From: [redacted]
Sent: 13 October 2020 17:51
To: [redacted]
Subject: A quick word

Thanks. Great speak at 10.30am

[redacted]

From: [redacted]
Sent: 13 October 2020 15:08
To: [redacted]
Subject: RE: A quick word

Hi [redacted]

No problem at all- 10.30 ok with you?

Best wishes,

[redacted]

From: [redacted]
Sent: 13 October 2020 14:52
To: [redacted]
Subject: A quick word

[redacted]

Hope all well with you.

Any chance of a quick word tomorrow? I'm free between 10.30am and 1pm then after 3pm.

[redacted]

The Electoral Commission

[redacted]

electoralcommission.org.uk

Document Three

Date: September 4 2020 13:00-13:30

From: [redacted]

To: [redacted]

Subject: Catch Up

As discussed.

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 the Scottish Government's deliberations on referendums 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.

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 referendums, 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.