

Document 1

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

Sent: 20 November 2020 10:55

To: [redacted]; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>

Subject: RE: FOI - searching required - meetings where a future independence referendum was discussed - searching required by 19 December

Hi [redacted],

It's a nil response from us.

Thanks,

[redacted]

cabsecCEAEA@gov.scot

#SCOTLANDISNOW



From: [redacted]

Sent: 19 November 2020 18:58

To: Cabinet Secretary for Constitution, Europe and External Affairs ; Cabinet Secretary for Health and Sport

Subject: RE: FOI - searching required - meetings where a future independence referendum was discussed - searching required by 19 December

Hi all,

I know it's been yet another busy week for everyone so this is probably not at the top of the to-do list!

Can you let me know if you hold any information relevant to this FOI? A response tomorrow would be helpful, if you have a chance!

Thanks,

[redacted]

From: [redacted]

Sent: 16 November 2020 16:27

To: Cabinet Secretary for Communities and Local Government

<CabSecCLG@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Economy, Fair Work and Culture <CabSecEFWC@gov.scot>; Cabinet Secretary for Finance

<CabSecFinance@gov.scot>; Cabinet Secretary for Health and Sport

<CabSecHS@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>;
Cabinet Secretary for Rural Economy and Tourism <CabSecRET@gov.scot>;
Cabinet Secretary for Social Security and Older People <CabSecSSOP@gov.scot>;
Cabinet Secretary for the Environment, Climate Change and Land Reform
<CabSecECCLR@gov.scot>; Cabinet Secretary for Transport, Infrastructure and
Connectivity <CabSecTIC@gov.scot>; Deputy First Minister and Cabinet Secretary
for Education and Skills <DFMCSE@gov.scot>; First Minister
<firstminister@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Cabinet
Secretariat inbox <CabinetSecretariat3@gov.scot>

Subject: FOI - searching required - meetings where a future independence
referendum was discussed - searching required by 19 December

Private Offices/Cabinet Secretariat

I am dealing with an FOI request which is looking for the following information:

From 1 September to present:

*Dates of meetings where a future independence referendum was discussed where a
Scottish Government Cabinet member was present.*

Can you please search your records for any meetings between 1 September and 12
November at which a future independence referendum was discussed? It would be
very helpful to have responses, including nil returns, **by close of play on Thursday,
19 November**. Please note that the requester is only looking for dates of meetings
so further detail including list of attendees or minutes of meetings are not required on
this occasion.

Please get in touch if you have any questions.

Many thanks,
[redacted]

Document 2

From: [redacted]

Sent: 16 November 2020 14:53

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>

Cc: [redacted]; [redacted]; Cameron DA (Donald) (Constitution and UKR)

<Donald.Cameron@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)

<David.Rogers@gov.scot>; [redacted]; Curtis PS (Penelope)

<Penelope.Curtis@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Subject: S5O - 04773 - Draft Answer & Background Note

Importance: High

PS/Cabinet Secretary,

Please find attached our suggested draft Answer and Background Note for number 5 of Mr Russell's Portfolio Questions this week.

[redacted]

Document 2a – attachment to document 2.

Q: To ask the Scottish Government on what basis the constitution secretary stated that an independence referendum would take place in 2021 (S5O-04773).

A: [redacted]

Document 3 – Extract – the rest of the document is out of scope so has not been included.

Cabinet Secretary for Constitution, Europe and External Affairs – meeting with Australian High Commissioner – 10 November 2020

11. MR set out the intention to publish a draft bill before the end of the parliamentary terms which sets out the question to be asked and the timescale in which, within the next term of Parliament, we consider the referendum should be held. MR noted following the Scottish elections in May 2021 there could then be no democratic justification for UKG to ignore the rights of the people of Scotland to choose their own future.

12. GB enquired about the proposed timing of the referendum post the Scottish election. MR confirmed he would hope a second referendum could be held by end 2021.

Document 4 – Extract – the rest of the document is out of scope so has been removed.

4 October: “Boris Johnson has said that now is not the time for a [second referendum](#) on Scottish independence but refused to rule out a vote if the SNP win a landslide in next year’s elections. In an interview on the BBC’s *The Andrew Marr Show*, the prime minister repeatedly declined an invitation to answer yes or no to whether a vote should be granted if the nationalists won a big majority at Holyrood” (*The Times*)

30 September: Keatings case: the court refused Mr Keatings’ application for for SG to produce any draft of a referendum bill and associated documents. SG does not comment on live legal proceedings

18 September: Survation poll for Scotland in Union (10-12 September) finds that 63% think that a second independence referendum is not a priority at this time – 29% say it is. 47% would vote ‘to remain’ in the UK; 37% would vote ‘to leave’. 42% say that replacing the pound with a new currency would make them less likely to vote for independence; 16% say it would make them more likely to vote for independence; 35% say it would not affect their vote. 43% would be less likely to vote for independence if there was a hard border between Scotland and England; 18% say it would make them more likely to vote for independence; 31% say it would not affect their vote. 42% would be less likely to vote for independence if it meant Scotland being out of both the UK and EU for several years; 15% say they would be more likely to vote for it; 33% say it would not affect their vote.

4 September: Professor John Curtice on BBC Newsnight “If the SNP do go into the Holyrood election saying we want another referendum just like 2014 and that’s what you’re voting for, and they get an overall majority, the question the UK Government will have to face is if that isn’t adequate evidence that a referendum should be held, then what would be?”

1 September: PfG contains SG’s plans to publish a draft Referendum Bill during this Parliament.

30 August: ‘£62 billion Britain Bonus squandered by the SNP’, Scottish Conservatives news release. The £62 billion figure is the Conservatives’ cumulative ‘union dividend’ figure, based on the GERS report, extended back to 2007-08.

28 August: A recent panelbase poll (12-18 Aug) shows that the majority of Scots believe that the Scottish Government would do a better job of running the economy than Westminster (59% including don’t knows and 70% excluding don’t knows). The poll also found a majority say that the Scottish Parliament should be able to call a referendum if it contains a majority for independence after the May 2021 election, with or without Westminster permission (52% agree 35% disagree and 13% don’t know).

- Due to the coronavirus crisis, it is clearly not be possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current Parliamentary term next year.

- The Scottish Government now plans to publish, before the end of this Parliament, a draft bill for an independence referendum – setting out the terms of a future referendum clearly and unambiguously to the people of Scotland.
- The draft bill will set out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held.
- Timing of an independence referendum will take account of the development of the COVID-19 pandemic at the time of publication of the draft bill, and will ensure the flexibilities to respond to any further restrictions caused by it.
- Other work to prepare for an independence referendum has been paused for the time being as the Scottish Government is focused on responding to the current COVID-19 pandemic and we will return to the issue when it is appropriate to do so.

Referendum Franchise:

- It is right that people who make their lives in Scotland and contribute to society should have the right to vote, wherever they are from.
- The Referendums Scotland Act sets out the franchise for referendums in Scotland.
- The franchise at referendums as set out in the Act will be any UK or Commonwealth citizen, citizen of the Republic of Ireland or relevant citizen of the European Union who is aged 16 or over, is registered in the register of Scottish local government electors and is not subject to any legal incapacity to vote.
- The Electoral Franchise Act extended the franchise for Scottish Parliament and Local Government elections to persons with leave to remain in Scotland, whatever their nationality.
- Scottish Ministers have set out their intention to update the Referendums Act in line with the Electoral Franchise Act.
- The franchise in the Referendums Act has been approved by the Parliament.
- We now have legislation setting the rules for any referendum that is now, or in future, within the competence of the Scottish Parliament.
- A standing framework for referendums is a good thing for a country and Parliament to have.
- Our aim is to ensure that all referendums are run to the highest possible international standards and that the results are accepted by all parties.
- It is important that the rules for any referendums held on devolved matters are suited to Scotland and agreed by the Scottish Parliament.

- **March 2019:** Elmar Brok, then Chair of the European Parliament Foreign Affairs Committee said: *“If that is done in a referendum under the rules of the United Kingdom, and if you decide so then it would be then easy to have membership negotiations because Scotland fulfils all the needs for membership, because all the standards are already there”*.
- When the pandemic allows, the Scottish Government will continue to pursue the effective, and quickest, way of achieving an independent Scotland – a referendum that is beyond legal challenge.
- The Scottish Government remains of the firm belief that the people of Scotland have the right to choose their own future and is determined to make that happen.

Document 5

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

Sent: 12 November 2020 08:44

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

Cc: [redacted]

Subject: RE: Referendum Bill team FOI - searching required

Hi [redacted]

Yes it's a nil return from us.

Thanks

[redacted]

I cabsecCEAEA@gov.scot | www.gov.scot |

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From: [redacted]

Sent: 11 November 2020 09:37

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

Cc: [redacted]

Subject: Referendum Bill team FOI - searching required

Hi guys,

I'm dealing with two FOIs relating to correspondence about the Referendum Scotland Bill team, full text below. The requests cover two time periods but I've combined into one so it is easier for you to search.

From 1 July 2020 to 2 November 2020:

Copies of all correspondence (emails, letters, hand-written notes, memos, minutes of calls, minutes of meetings and/or otherwise) from Michael Russell which include reference to the "Referendums Scotland Bill Team".

I would be grateful if you could conduct searches of your records from 1 July – 2 November 2020 to see if you hold anything that includes a reference to “Referendums Scotland Bill Team”. As the requester is specifically looking for correspondence from Mr Russell and as the Bill team members were all redeployed to covid and elections work in March, I am fairly certain you won’t hold anything but grateful for confirmation that this is the case.

It would be much appreciated if you could pass anything you hold to me by close of play on Thursday so I can draft a response on Friday.

Thank you!

[redacted]

Document 6

From: [redacted]

Sent: 24 November 2020 15:23

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>

Cc: [redacted]; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted]

Subject: FOIs regarding correspondence with the Electoral Commission- deadline 26 November

Importance: High

[redacted],

[redacted] is currently dealing with an FOI on correspondence between the Scottish Government and the Electoral Commission on the Referendum Bill since July 2020.

I have attached a draft response, as well as Annex A which contains information to be released, and Annex B which explains the exemptions applied.

The information to be released is mainly emails on regular catch up discussions between officials and the Electoral Commission, and an FOI request the Commission answered where it consulted SG whilst preparing the response.

The Commission has indicated it is content with the information to be released. SpAds are also content.

The deadline for the response is Thursday 26 November so clearance before this point would be greatly appreciated.

Happy to discuss.

Thanks,
[redacted]

Document 7

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

Sent: 30 November 2020 08:41

To: [redacted]

Cc: Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]; [redacted]; [redacted]; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [redacted]; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>

Subject: FW: FOIs regarding the draft referendum bill

Good morning [redacted]

Mr Russell has commented that he is content [redacted]

[redacted]

I cabsecCEAEA@gov.scot | www.gov.scot |

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From: [redacted]

Sent: 23 November 2020 19:01

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>

Cc: Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]; [redacted]; [redacted]; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [redacted]

Subject: FOIs regarding the draft referendum bill

[redacted],

I am currently dealing with 10 FOIs looking for material about a draft referendum bill covering a range of overlapping dates between July – Oct. Full text of the requests are below.

Copies of any correspondence (emails, hand-written notes, briefing, Whatsapp messages, minutes of meetings, minutes of calls and/or otherwise) between civil servants, special advisers and/or any

member of the Scottish Government cabinet on the referendums bill that will be brought forward as outlined in the 2020-21 Programme for Government.

and

Copies of any correspondence (emails, memos, hand-written letters, notes, minutes of meetings, minutes of calls, whatsapp messages and/or otherwise) to and/or from civil servants and/or Special Advisors and/or any member of the Scottish Government Cabinet members regarding the Referendums Bill.

[redacted]

I would be grateful for clearance of the proposed response from Mr Russell in due course. [redacted]

Thanks,
[redacted]

Document 8

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

Sent: 09 November 2020 17:30

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

Cc: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; [redacted]; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]

Subject: RE: FOI - for comment - 202000102243

Hi [redacted],

Mr Russell is content.

Thanks,

[redacted]

cabsecCEAEA@gov.scot

#SCOTLANDISNOW



From: [redacted]

Sent: 09 November 2020 17:25

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

Cc: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; [redacted]; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]

Subject: FOI - for comment - 202000102243

Hi [redacted],

Please see attached FOI response for Mr Russell to consider. The response is due on **19 November** so it would be helpful to have comments in advance of this.

The wording of the request is below and the draft response is attached. SpAds are content with the response.

202000102243 Due Thurs, 19 Nov	Details of the number of civil servants that are part of the Referendums Scotland Bill Team.
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	Details of the remit of the Referendums Scotland Bill Team. (e.g. description of the main duties of the team, key roles of the team and/or otherwise)
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Many thanks,

[redacted]

Document 9

From: [redacted]

Sent: 25 November 2020 14:42

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>

Cc: [redacted]; [redacted]; [redacted]; Cameron DA (Donald) (Constitution and UKR)

<Donald.Cameron@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)

<David.Rogers@gov.scot>; [redacted]

Fol SpAds PO <Fol.SpAdsPO@gov.scot>

Subject: Fol - [redacted] - 202000104776 - Deadline 26 November

Importance: High

PS/Cabinet Secretary,

Please find attached for comment, our proposed response to an FOI request asking:

From 1 September 2020 to 15 September 2020:

Copies of any correspondence (emails, letters and/or otherwise) from members of the public to Nicola Sturgeon regarding independence and/or another independence referendum.

After conducting various searches, We have identified 19 items of correspondence in scope. Four of these items were released as part of a recent FOI which was published and a link to that case is included. The other 15 items are in the Annex with personal details redacted.

The 20 working day deadline for this case is **Thursday 26 November**.

Thanks,

[redacted]

Document 10

From: [redacted]

Sent: 20 November 2020 15:23

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; FoI SpAds PO <Fol.SpAdsPO@gov.scot>

Cc: Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>;

[redacted]; [redacted]; [redacted]; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>;

Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>;

[redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted];

Ferguson SE (Shirley) <Shirley.Ferguson@gov.scot>; Solicitor to the Scottish

Government <solicitor@gov.scot>; [redacted]; [redacted]

Subject: FOI - [redacted] - 202000105422 - Deadline 30 November

Importance: High

PS/Cabinet Secretary,

PS/Lord Advocate,

PS/Special Advisers,

Please find attached for comment our proposed response to an FOI request asking:

In recent communications with members of the electorate, the following paragraphs have been there-in contained in the correspondence:

“It is the view of Scottish Ministers that if there is a majority support for the bill in the Scottish Parliament in the next term, there could then be no moral or democratic justification for any UK government to ignore the rights of the people of Scotland to choose their own future.”

“Because the Scottish Government focus on tackling the pandemic it will not be possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current parliamentary term next year.”

The same sort of statements have been made in the Scottish Governments programme for Government, specifically at page 126.

Talking specifically of the "draft bill" mentioned by the First Minister in her speech for the programme for Government whereby she stated the Scottish Governments intention to put a draft bill to parliament before the end of the parliamentary term and the Scottish Elections in May 2021 (bill expected March 2021) and for the Scottish National Party separately to run for the Scottish Election on a mandate to enter that bill to parliament formally if re-elected, I hereby formally seek the following answers to the following questions under freedom of information. Failure to answer said questions or avoid answering them shall be founded upon.

1. *Noting the awfully specific language used in this correspondence is “moral or democratic justification” and deliberately omits the phrase “legal” justification; and That the Scottish Government specifically includes the term*

“beyond legal challenge” in the next paragraph; Can the Scottish Government please advise on what legislation or precedent it is operating under which asserts or indeed translates a moral or democratic justification into a legal justification?

2. *Noting the Scottish Governments strict adherence to a line of obtaining and order in council pursuant to Section 30 of the Scotland Act 1998, can the Scottish Ministers please advise how the aforementioned “moral and democratic” justification translates into legally compelling the UK Government and the Parliament of the United Kingdom into acquiescing to an order in council under the provisions of Section 30 of the Scotland Act 1998?*

3. *In the event of the current UK Government (which is neither moral, nor democratic) refusing an order in council under section 30 of the Scotland Act 1998, taking no heed of a moral or democratic justification, can the Scottish Government kindly advise what steps the Scottish Government has taken to ensure the legality of the bill without an order in council under Section 30 of the Scotland Act 1998?*

4. *Noting the words “beyond legal challenge”, it can be reasonably stated that the Scottish Government would expect legal challenge of any bill put to the floor of the Scottish Parliament without an order in council under Section 30 of the Scotland Act 1998. Therefore, can the Scottish Government advise what action it has taken with respect to establishing the constitutionality of the Scottish Parliament to legislate on said bill without such legal challenge happening.*

5. *Noting the words “majority support for the bill in the Scottish Parliament in the next term” can the Scottish Government please confirm if and how it has established that it would first be able to make the statement required of it under Section 31(1) of the Scotland Act 1998 with regards to the bill being within the legislative competence of the Scottish Parliament and its members to support and vote on said bill; whereby that provision stipulates that: “A person in charge of a Bill shall, on or before the introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament.*

6. *Noting the term “beyond legal challenge” and “majority support for the bill in the Scottish Parliament in the next term” can the Scottish Government please confirm if and how it has established that it would be compliant with the provisions of Section 31(2) of the Scotland Act 1998 and that it would be competent to be formally introduced to parliament, specifically with regards to the presiding officer of the Scottish Parliament certifying that a bill is within the legislative competence of the Scottish Parliament and its members to support and vote on said bill; whereby that provision stipulates that: “The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision.”*

[redacted]

The 20 working day deadline for this case is **Monday 30 November**.

[redacted]

Document 11

From: [redacted]

Sent: 05 November 2020 15:19

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

Cc: [redacted] [redacted] Cameron DA (Donald) (Constitution and UKR)
<Donald.Cameron@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)
<David.Rogers@gov.scot>; [redacted]; Fol SpAds PO <Fol.SpAdsPO@gov.scot>

Subject: URGENT - FOI 202000096481 - Deadline Today

Importance: High

Hi [redacted],

As discussed, if possible, I would be grateful if the attached FOI response and schedule of information could be passed urgently to Mr Russell for comment please. The request asks:

Copies of correspondence (emails, texts, whatsapp messages, written notes, minutes of calls, minutes of meetings and/or otherwise) between civil servants and/or Special Advisors and/or members of the Scottish Government Cabinet regarding the need to update the 'Scotland's Future' paper originally published in November 2013.

We have identified a small amount of information which should be released. There are also exemptions which apply to some of the info as outlined in the schedule of information.

You will also want to note that Special Advisors are content with the proposed response.

Please accept my apologies for the incredibly short deadline.

[redacted]