



Cabinet Office

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Lisa MacKenzie

By email: [contact@murrayblackburnmackenzie.org](mailto:contact@murrayblackburnmackenzie.org)

FOI Reference: FOI2022/02649

7 April 2022

Dear Lisa MacKenzie

We refer to your request where you asked:

*“1. Please provide details of all correspondence between the GEO and the Scottish Government regarding the Scottish Government's draft Gender Recognition Reform Bill, including correspondence relating to the potential cross-border effects of the legislation in the rest of the UK since 17 March 2020.*

*2. Please provide details of all analysis undertaken by the GEO of the potential cross-border effects of the Scottish Government's draft Gender Recognition Reform Bill in the rest of the UK.”*

We are writing to advise you that following a search of our paper and electronic records, we have established that the information you requested is held by the Cabinet Office.

However, the information you have requested is exempt by virtue of section 28(1) and 35(1)(a) of the Freedom of Information Act.

Section 28(1) exempts if its disclosure would or would be likely to prejudice relations between any administration in the United Kingdom and any other such administration. Section 28(1) is a qualified exemption, which means that the public interest in disclosure must be balanced against the public interest in withholding the information. The Cabinet Office recognises that there is a general public interest in disclosure of information and we recognise that openness in government may increase public trust in and

engagement with the government. We recognise that there may be public interest in releasing information on the relationship between the UK Government and the devolved administrations. On the other hand, there is a very strong public interest in maintaining good relations between the Government of the United Kingdom and the other administrations in the United Kingdom, and in maintaining a minister's ability to engage in free and frank conversations concerning those relationships without the risk of those views being made public. A good degree of mutual trust between the different administrations of the United Kingdom is necessary for the continued good governance of the whole country. We have determined that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 35(1)(a) of the Freedom of Information Act protects the formulation of policy. Disclosure would weaken Ministers' ability to discuss controversial and sensitive topics free from premature public scrutiny. Section 35 is a qualified exemption and we have considered whether the balance of the public interest favours our release of this material. As above, there is a general public interest in disclosure of information and we recognise that openness in government may increase public trust in and engagement with the government. We recognise that the decisions Ministers make may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent. These public interests have to be weighed against a strong public interest that policy-making and its implementation are of the highest quality and informed by a full consideration of all the options. Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications. The candour of all involved would be affected by their assessment of whether the content of the discussions will be disclosed prematurely. If discussions were routinely made public there is a risk that Ministers may feel inhibited from being frank and candid with one another. As a result the quality of debate underlying collective decision making would decline, leading to worse informed and poorer decision making. Taking into account all the circumstances of this case, we have concluded that the balance of the public interest favours withholding this Information.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Head of Freedom of Information  
Cabinet Office  
1 Horse Guards Road  
London  
SW1A 2HQ

email: [foi-team@cabinetoffice.gov.uk](mailto:foi-team@cabinetoffice.gov.uk)

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the Cabinet Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. B. C.', written in a cursive style.

FOI Team  
Cabinet Office