

## **Freedom of Information Act 2000**

### **Decision notice**

**Date:** 30 September 2015

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to polling research regarding the then impending Scottish independence referendum. The Cabinet Office provided some information to the complainant, but refused the remainder under section 22(1)(a) and 35(1)(a) of the Freedom of Information Act 2000 (the Act). The Cabinet Office also stated that should section 22(1)(a) be overturned there was information being withheld under that exemption which was exempt under sections 35(1)(a), 43(1) and 43(2) of the Act.
2. The Commissioner's decision is that on the balance of probabilities the Cabinet Office provided to the complainant all of the held information relating to who commissioned the work from Ipsos MORI to which exemptions were not applied. He also considers that sections 22(1)(a), 35(1)(a), and 43(2) of the Act have, ultimately, been correctly applied. He has not considered whether section 43(1) applies because the relevant information was also withheld under section 43(2). However, the Cabinet Office breached section 17(1) of the Act for failing to inform the complainant that sections 22(1)(a), 43(1) and 43(2) applied when it issued its initial refusal notice. The Commissioner requires no further action to be taken by the public authority in respect of this matter.

#### **Request and response**

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3. On 15 May 2014, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"I am seeking information related to expenditure dated 2014-01-21 which related to the "Devolution Team". Ipsos Mori, presumably, undertook work in return for the expenditure.*

*Could I please have the following information:*

- 1. Who commissioned, ordered, requested, or signed off on, Ipsos Mori undertaking such work? For example, was it a head of a team, or a project manager? For example, did a head of a department do so on the orders of politician, and if so who?*
  - 2. What, if any, was the rationale or "business case" given for commissioning or requesting the work?*
  - 3. What requirements were Ipsos Mori given? Insofar as Ipsos Mori may have written some of the requirements themselves, what requirements did the Devolution Team or Cabinet Office (etc.) agree to or sign off on?*
  - 4. What questions did Ipsos Mori ask? I mean this in the context of undertaking polls, etc. I am also interested in each question's standard or permitted answers, which for example might be "Yes / No / Don't Know".*
  - 5. Any and all outputs or results of the work by Ipsos Mori. In particular, tabular polling results, graphs, spreadsheets, brochures and summarising documents.*
  - 6. Any discussion or orders or criteria (etc.) regarding whether to publicly release the output or results of the work. This is regardless of whether any such hypothetical public release would have included everything, or instead would have contained only summarised or partial results. For the avoidance of doubt I don't include any other FoI requests; I do include documents or orders relating to a media strategy for the polling results.*
  - 7. The names of the people, and departments or agencies or organisations etc. who were sent the outputs or results of the work. This is whether the outputs sent were full or instead summarised. For example, documents from Ipsos Mori may have been forwarded by email outwith the department, to other departments or to politicians."*
4. The Cabinet Office responded on 13 June 2014. It confirmed that it held relevant information but it required further time to consider the request. It stated that the information was exempt under section 35(1)(a) of the Act and it needed more time to consider the public interest balance. This is permitted as per section 10(3) of the Act, which allows public authorities to extend the time for its response when considering the

public interest balance "until such time as is reasonable in the circumstances".

5. The Cabinet Office issued its refusal notice on 15 August 2014. It responded to the different items of the complainant's request as follows:
  1. Named the team responsible for the work but not any specific individual.
  2. & 3. Confirmed that information was held but that it was exempt under section 22(1)(a) of the Act as it was due for future publication. The Cabinet Office also stated once the information was published there would be redactions under sections 35(1)(a), 43(1) & (2) of the Act.
  4. – 7. Confirmed that information was held but that it was exempt under section 35(1)(a) of the Act as it related to the formulation and development of government policy.
6. The complainant requested an internal review. The Cabinet Office issued its internal review on 10 November 2014. The review upheld the decision made in its refusal notice of 15 August 2014.

### **Scope of the case**

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7. The complainant originally contacted the Commissioner on 21 October 2014 to complain about the length of time the Cabinet Office was taking to complete its internal review.
8. Once the review had been issued, the complainant confirmed that he wished to appeal against it.
9. The Cabinet Office has incorrectly applied section 22(1)(a) of the Act to the full scope of requests 2 and 3. This is because it can only apply to information which is intended for future publication. Any information withheld under section 22(1)(a) which the Cabinet Office would later intend to be withheld under section 35(1)(a), 43(1) and 43(2) is not intended for future publication.
10. The Commissioner considers the scope to be as follows:
  - Item 1 of the request – whether further relevant information is held.
  - Item 2 and 3 of the request – whether sections 35(1)(a), 43(1), 43(2) of the Act applies to some of the information, and whether 22(1)(a) of the Act applies to the remainder.

- Item 4 – 7 of the request – whether section 35(1)(a) of the Act applies to the withheld information.

## Reasons for decision

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### Section 1 – information held

- 1. Who commissioned, ordered, requested, or signed off on, Ipsos Mori undertaking such work? For example, was it a head of a team, or a project manager? For example, did a head of a department do so on the orders of politician, and if so who?"*
11. The complainant has not specifically argued that further information was held, but the Commissioner considered that it does fall within the scope of his appeal. To determine whether further information is held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions - applies the civil standard of the balance of probabilities. In effect, he determines whether it is likely that information is held.
12. In its submissions to the Commissioner, the Cabinet Office stated that it had no recorded information about any specific individual who commissioned the work from Ipsos MORI. The Cabinet Office provided the documentation it held on the commission of the work; it evidences that it was requested specifically by the Constitution Group Management Unit.
13. The Commissioner considers this to be reasonable, and having reviewed the information requesting the work from Ipsos MORI he is of the view that the Cabinet Office explanation fits the circumstances of the case. Therefore the Commissioner's decision is that on the balance of probabilities it is likely that the Cabinet Office has provided the complainant with all of the relevant information for item 1 of the request.

### Section 22(1)(a) – information intended for future publication

- 2. What, if any, was the rationale or "business case" given for commissioning or requesting the work?*
- 3. What requirements were Ipsos Mori given? Insofar as Ipsos Mori may have written some of the requirements themselves, what requirements did the Devolution Team or Cabinet Office (etc.) agree to or sign off on?*
14. This section of the decision applies to the information withheld for items 2 and 3 of the request to which the Cabinet Office did not apply sections 35(1)(a), 43(1) and 43(2) of the Act. This information is the Cabinet

Office's invitation to tender for analysis work on its Scotland programme, as well as IPSOS Mori's proposal for the job.

15. Section 22(1)(a) states:

*(1) Information is exempt information if –*

*(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)*

16. To make a decision on whether the Cabinet Office is entitled to withhold the requested information under section 22(1)(a) the Commissioner will first need to determine whether the exemption applies, and if so, then to consider the public interest balance.

*Does the exemption apply?*

17. In order to determine whether the exemption applies the Commissioner will consider whether:

- the public authority holds it with a view to its publication;
- the public authority or another person intends to publish the information at some future date, whether determined or not; and
- in all the circumstances it is reasonable to withhold the information prior to publication.

18. The Commissioner knows with certainty that the information is held by the Cabinet Office as he has been provided with copies. He has also been provided with internal emails between the Cabinet Office and Ipsos MORI which show that the Cabinet Office did intend to publish the information at a future date – although a specific date is not referred to. Within these emails there is also reference to the Cabinet Office's policy of publishing all contracts with a value over £10,000.<sup>1</sup> The emails also show that the Cabinet Office informed IPSOS Mori of its policy to disclose information in due course. In the Commissioner's view it is perfectly valid for the Cabinet Office to wish to abide by its established policy.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61200/guidance-publication-of-new-central-government-contracts.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61200/guidance-publication-of-new-central-government-contracts.pdf) - see paragraph 1.2 on page 3

19. The Commissioner is satisfied that the Cabinet Office held the information with a view to publication, and that the information was due to be published at a future date. He is also of the view that under the circumstances it was reasonable to withhold the information prior to publication due to the Cabinet Office's established policy to disclose the information in due course. Therefore, the Commissioner's decision is that section 22(1)(a) applies. He will now go on to consider the public interest balance.

*Public interest test*

20. With the spending of all public money comes an inherent public interest argument for accountability about how and why the money was spent. Given the subject matter of the work this is certainly true in this case, and the Commissioner has given due consideration to the accountability that could be achieved by disclosure of the withheld information.
21. Disclosure would also increase transparency over government decisions. However, the Commissioner has not given this factor much weight in this decision. Without the information which the Cabinet Office considers exempt under section 35(1)(a), 43(1) and 43(2) the information is fairly anodyne and does not provide much in the way of improving understanding of the government's decisions during the Scottish independence referendum. Instead it mostly shows standard contract tender paragraphs that would be expected for this situation regardless of the subject matter of the analysis programme.
22. There are also substantial arguments in favour of maintaining the exemption. The exemption was inserted into the Act for a reason, as there is a public interest in public authorities being able to disclose information at a time when it is reasonable in the circumstances to do so, as is the case with the withheld information. In this instance, the Cabinet Office has an established and publicised policy which shows that the information relating to this contract – which is not exempt otherwise than under section 22(1)(a) – will be disclosed in due course.
23. In addition to this, the Cabinet Office has demonstrated that it was in discussions with IPSOS Mori to confirm that this would occur in this case. The Commissioner considers that there is a public interest argument to be made that the Cabinet Office is able to work with external partners to agree when information can be disclosed in a reasonable timeframe.
24. In reaching his decision the Commissioner has fully considered all of the relevant arguments, especially those of accountability and transparency, however his decision is that the public interest balance (ie at the time of the request) favours maintaining the exemption. The Commissioner

considers that the factors in favour of disclosure are not particularly strong in this instance and are outweighed by the Cabinet Office's pre-existing commitment to disclose the information in accordance with central government policy. Therefore the Commissioner agrees that section 22(1)(a) applies and does not require the Cabinet Office to take any further steps regarding the relevant information falling within these items of the request.

## **Section 43(2) – prejudice to commercial interests**

2. *What, if any, was the rationale or "business case" given for commissioning or requesting the work?*
  3. *What requirements were Ipsos Mori given? Insofar as Ipsos Mori may have written some of the requirements themselves, what requirements did the Devolution Team or Cabinet Office (etc.) agree to or sign off on?*
26. The Cabinet Office identified information that it considered to be commercially sensitive within the documents concerning the invitation to tender to IPSOS Mori and its application. This information related to how IPSOS Mori develops its products for its clients, IPSOS Mori's previous contracts, its methodology for collecting and analysing data, post-survey processing, operational data, and the unit costs for the company's service.
  27. Section 43(2) of the Act states that information is exempt information if its disclosure under the legislation would – or would be likely to – prejudice the commercial interests of any person (including the public authority holding it). A commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.
  28. In order for a prejudice based exemption such as section 43(2) to be engaged the Commissioner considers that three criteria must be met:
    - Firstly, the actual harm which the public authority alleges would – or would be likely – to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
    - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
    - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would'

result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

*What harm would – or would likely – occur if the withheld information was disclosed?*

29. The Cabinet Office argued that harm would occur to IPSOS Mori's commercial interests if the information withheld under section 43(2) was disclosed. The information gives details of how Ipsos MORI specialised services and how this is adjusted to suit its clients. This is Ipsos MORI's unique selling point and the basis for its commercial activities; without this being withheld there would be significant harm as Ipsos MORI's competitors would know exactly how Ipsos MORI operated. This would allow for its products to be copied or provide rival companies with insider knowledge of its commercially sensitive information.
30. The Commissioner has accepted this argument and concurs. This information concerns the primary function of Ipsos MORI and its main reason for existing as a company. It is safe to say that harm would occur to its commercial interests should this information be disclosed.
31. The Cabinet Office also argued that its own commercial interests would be affected by the disclosure of this information. The Cabinet Office stated that disclosure would damage the trust it has established with Ipsos MORI and other third parties. The Cabinet Office argued this would adversely affect its ability to contract out similar services.
32. The Commissioner views this as reasonable, and considers that it is likely that there would be some third parties who would be reluctant to enter into commercial agreements if their sensitive information was to be revealed into the public domain.

*Is there a relationship between potential disclosure and the prejudice the exemption is designed to protect?*

33. The Commissioner considers that the consequences of disclosure cannot be seen as trivial, and there is an actual causal relationship between the potential disclosure of the information and prejudice to Ipsos MORI's commercial interests. Ipsos MORI is one of the foremost polling analysis companies in the world and this information relates to its operational activities and analysis methodology, which is its primary commercial function. Similarly, the Cabinet Office relies on polling companies such as Ipsos MORI in order to carry out its function of developing and



implementing government policy. Should its ability to form commercial agreements be harmed this would cause actual prejudice to its commercial interests.

34. The Cabinet Office provided examples of the harm that would occur to demonstrate that the relationship is very much real. One such example was that the contractual payments from the Cabinet Office to Ipsos MORI were released under monthly transparency disclosures. If this was combined with the information in the tendering document then Ipsos MORI's competitors would be able to determine the unit costs for Ipsos MORI's services.
35. The Commissioner is satisfied that there is a relationship between the potential disclosure and prejudice to Ipsos MORI's and the Cabinet Office's commercial interests.

*What is the likelihood of this prejudice occurring should the information be disclosed?*

36. For Ipsos MORI's commercial interests, the Commissioner considers that the likelihood is strong and it can be said that this would happen. As has already been established, this relates to Ipsos MORI's primary function and it operates as a lead organisation in its field. The Commissioner does consider it likely that Ipsos MORI's competitors would be interested in Ipsos MORI's operational data.
37. For the Cabinet Office's commercial interests, the Commissioner considers that the degree of harm is less severe and the likelihood less certain. There is always likely to be a third party willing to work with the Cabinet Office given the notoriety of its work and the value of the contracts. However, the Commissioner still considers that it is likely that the prejudice would occur. The Cabinet Office frequently makes commercial agreements of this nature and it would only take for one of those to be affected for the prejudice to have occurred.

#### *Commissioner's conclusion*

38. Having reviewed the Cabinet Office's submissions and considered his own view, the Commissioner's conclusion is that the potential disclosure of this information would prejudice Ipsos MORI's commercial interests and would be likely to prejudice the Cabinet Office's commercial interests. The Commissioner will therefore now move onto the public interest test.

#### *Arguments in favour of disclosing the information*

39. The Cabinet Office has spent public money obtaining the services of Ipsos MORI, and with the spending of these funds comes an inherent

public interest argument in disclosure to promote transparency. The information would reveal the services that the Cabinet Office purchased from Ipsos MORI and allow discussion about whether this was a reasonable transaction.

40. Disclosure of this information would also promote accountability of the Cabinet Office's decisions as it would be clear what products were purchased by the relevant team within the Cabinet Office. However, the Commissioner does not consider that the specific information in this case would do much to promote accountability as it is largely the operational data of Ipsos MORI, so it would not reveal a great deal about the interactions between the two parties as this was handled in information withheld under sections 22(1)(a) and 35(1)(a).

*Arguments in favour of maintaining the exemption*

41. There is a public interest argument in allowing private organisations that enter into commercial agreements with government departments to be able to protect sensitive information. Disclosure of this information would disrupt the level playing field in which private companies operate and would be likely to cause commercial damage to those organisations. The Commissioner considers that private enterprises should, to an extent, expect a degree of protection of their most sensitive commercial information.
42. Similarly, there is a public interest argument in not disrupting the commercial relationship between government departments and third party private organisations. The Commissioner has established that it would be likely to prejudice the Cabinet Office's commercial interests and lead to less competition for tenders to government contracts. This has the potential to affect the price at which the Cabinet Office can purchase services from third party organisations, which is in the public interest.
43. The Cabinet Office highlighted the point above and stressed that this was especially true in this instance, because it had a long established relationship with Ipsos MORI and knew that it would be relying on its services in the future.
44. The Cabinet Office also argued that there was a public interest in the ensuring the government kept its reputation for keeping commercially sensitive information secure. This allowed it to have more productive working relations with companies and individuals who wished to carry out commercial activity with the Cabinet Office.

*Balance of the public interest test*

45. In determining the balance of the public interest the Commissioner has considered all of the relevant factors for this specific information. He has given the appropriate consideration to the public interest factors in disclosing this information, but in this case he does not consider them to be particularly strong. The specific information for this case relates to Ipsos MORI's operational measures and pricing information, and there is not much to be gained in the way of transparency and accountability of government decisions by revealing this sensitive information to the public domain.
46. Instead, the Commissioner considers that the overriding factors are the arguments to maintain the exemption. This information is of pivotal importance to Ipsos MORI and there is a strong argument to support keeping this from being exposed to its competitors. There is also an argument in favour of protecting the Cabinet Office's commercial relations by allowing it to conduct commercial agreements without scrutiny into every detail of its operation, especially where that information would not provide much benefit to the public at large. Therefore, the Commissioner's decision is that section 43(2) applies to the withheld information.
47. The Cabinet Office also cited section 43(1) for some of the information that has been withheld under section 43(2), because it considers that information to be a trade secret under the terms of the Act. However, as the Commissioner has found this information exempt under section 43(2) he has not considered whether section 43(1) applies.

**Section 35(1)(a) – information about the formulation and development of government policy**

*"2. What, if any, was the rationale or "business case" given for commissioning or requesting the work?"*

*3. What requirements were Ipsos Mori given? Insofar as Ipsos Mori may have written some of the requirements themselves, what requirements did the Devolution Team or Cabinet Office (etc.) agree to or sign off on?"*

*4. What questions did Ipsos Mori ask? I mean this in the context of undertaking polls, etc. I am also interested in each question's standard or permitted answers, which for example might be "Yes / No / Don't Know".*

*5. Any and all outputs or results of the work by Ipsos Mori. In particular, tabular polling results, graphs, spreadsheets, brochures and summarising documents.*

*6. Any discussion or orders or criteria (etc.) regarding whether to publicly release the output or results of the work. This is regardless of whether any such hypothetical public release would have included everything, or instead would have contained only summarised or partial results. For the avoidance of doubt I don't include any other FoI requests; I do include documents or orders relating to a media strategy for the polling results.*

*7. The names of the people, and departments or agencies or organisations etc. who were sent the outputs or results of the work. This is whether the outputs sent were full or instead summarised. For example, documents from Ipsos Mori may have been forwarded by email outwith the department, to other departments or to politicians."*

48. Section 35(1) states:

*"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-*

*(a) the formulation or development of government policy,"*

49. To make a decision on whether the Cabinet Office is entitled to withhold the requested information under section 35(1)(a) the Commissioner will first need to determine whether the exemption applies, and if so, then to consider the public interest balance.

50. Section 35 is a class based exemption so if information falls within the description of a particular sub-section of 35(1) then this information will be exempt. The public authority does not need to demonstrate that disclosure will cause prejudice to the purpose described in the sub-section in question.

51. The Cabinet Office explained that the information related to its policy of securing Scotland's place within the United Kingdom. This policy was aimed at returning a 'no' vote in the independence referendum for Scotland which was due to take place on 18 September 2014.

52. The Cabinet Office confirmed that Ipsos MORI was contracted to conduct research work into the Scotland analysis programme. It was asked to research the effectiveness of public communications on the referendum and this "directly informed ministerial decision-making in respect of the ongoing process of reviewing, revising and refining the policy on how to achieve the overall objective of keeping the union together".

53. The Commissioner has considered whether section 35(1)(a) can be applied to each of the relevant items within the request. When reaching his view the Commissioner was mindful that the information only need "relate" to the formulation and development of government policy. In

doing so, he formed the following observations regarding the information:

- 1) The relevant information within the tendering document explains the government's approach in applying for the analysis programme. This identifies the government's reasoning for wanting the work carried out which details how it will help formulate and develop government policy.
  - 2) Ipsos MORI's proposal relates to the government's policy as it explains how its services would be adapted to fit with the approach outlined in the tendering document. This identifies the ways in which Ipsos MORI would adjust its product to collect information which would be used in the formulation and development of government policy.
  - 3) The questions asked by Ipsos MORI would reveal the specific information that was being sought in order to understand the effectiveness of public communications. This in turn would be used to help develop government policy towards how it communicated its views on the Scottish independence referendum.
  - 4) The answers to the questions would provide the data which the government sought in order to develop its policy.
  - 5) The relevant information for this item of the request shows whether the government intended to disclose the data to the public, which comes within the overall communications strategy forming part of the policy aimed at keeping Scotland within the UK.
  - 6) By disclosing how the information was spread around government would reveal how the policy development was being handled and those involved in the development process.
54. The complainant made a point to the Commissioner that the information related to a policy decision that had already been made. He stated that on 12 June 2014, the then Scottish Secretary Alistair Carmichael released a leaflet entitled 'What staying in the UK means for Scotland'. The complainant felt that this leaflet and the public announcement that accompanied it showed that the government had reached a decision for its policy on the future of Scotland within the UK.
55. If valid this would have significant implications for the withheld information. Section 35(2) of the Act states that:

*"Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded–*

*(a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy"*

56. Therefore, if the complainant is right in his assertion that the policy decision had already been made, then the Cabinet Office would have to disclose any statistical information which was relevant to the decision. This would include parts of the research work conducted by Ipsos MORI which was withheld under section 35(1)(a).
57. Contrary to the complainant's assertion, the Cabinet Office maintained that the information was still being used at the time of the request in the formulation and development of its policy to keep Scotland within the UK.
58. The Commissioner's view is that the information for items 4 and 5 of the request can be considered as statistical information, in accordance with his own guidance on the matter<sup>2</sup>, whereas items 2, 3, 6 and 7 of the request are not. For items 4 and 5 of the request, the Commissioner accepts the Cabinet Office position that the information was still being used to help formulate and develop the government's policy on keeping Scotland within the UK. Whilst a leaflet had been released showing the government's position on the issue, the information would still likely be of value to those who wished to determine how effective government communications were in influencing the debate.
59. The Commissioner concurs with the complainant's view that a decision had been taken on how to use the information obtained from Ipsos MORI's analysis programme. However, the Cabinet Office argued that there was still an ongoing policy to ensure Scotland remained in the UK at the time of the request and that the information would be used in making further decisions on the formulation and development of said policy. The Commissioner accepts that this argument is appropriate and so is satisfied that section 35(1)(a) applies.
60. As the Commissioner is satisfied that the exemption applies he will now go on to consider the public interest balance.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf#page=40>

*Public interest test*

Complainant's position

61. The complainant argued to the Cabinet Office that the information would less likely be used for the formulation and development of government policy due to the "non-trivial" length of time that had passed from the payment to Ipsos MORI and the time of the request. Information that is less significant to the formulation and development of the government's policy would be afforded less protection than information which is vital to said policy.

Cabinet Office's position

62. In its submissions the Cabinet Office recognised the public interest in disclosing the information to highlight the background information that assisted the government in its decision making process. It also went on to recognise that transparency in this process can lead to an improvement in the quality of government decision making, as departments are more inclined to act appropriately should they know that the reasons for their decisions will be put into the public domain.

63. Against this the Cabinet Office provided a number of reasons why it felt there were strong public interest arguments in maintaining the exemption and thus withholding the information.

64. Firstly, it stated that there was a stronger argument for preserving the safe space for policy formulation and development by withholding information that is being used in an ongoing policy making process. It stated that the government's policy of trying to keep Scotland within the UK was of "huge constitutional significance" and that it had "massive implications both domestically and internationally" to the point where it "had the potential to have an impact upon everyone in the United Kingdom". Such was the vital significance of this policy that there was a substantial argument in favour of maintaining the exemption in order to safeguard the information that was being used to influence it.

65. Further, the Cabinet Office put forward its view that disclosure would inhibit the work of officials and ministers working with Ipsos MORI. The Cabinet Office provided an example of how the research was integrated into the work of the government's policy and argued that this would be hindered if the withheld information was disclosed whilst the formulation and development of the policy was still ongoing.

66. Lastly, the Cabinet Office argued that disclosure of the information would be of significant interest to the public and would likely lead to media and wider public concern. The Cabinet Office put that, at the time of the request, it "would be likely to be forced to divert already limited

resources into rebutting such inaccurate or unfair speculation". This diversion of resources was not in the wider public interest, and these resources would be better spent allowing the government to pursue its policy of keeping Scotland within the UK.

### Commissioner's position

67. The Commissioner's decision has been heavily influenced by the timing of the request. The referendum had not taken place by the time the request had been made and there was an intense debate taking place on the various arguments for and against Scotland remaining within the UK. The Commissioner is mindful that the requested information was part of the ongoing policy making process that was trying to influence this debate and ultimately affect the constitutional framework of the UK.

68. The Commissioner also acknowledges that section 35(4) is relevant to considering the public interest:

*"In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking."*

69. The Commissioner accepts the general argument behind the complainant's view regarding the length of time that has elapsed since Ipsos MORI was hired to carry out the analysis work. However, in this instance he does consider that the information would be of significant value to the formulation and development of government policy on Scotland's future in the UK. Public opinion may change over time and so the information might not be completely up-to-date, but the information also helped the government understand the effect of its policies. The time taken since the polling was carried out and the time of the request leads the Commissioner to consider that the information would still be of relevance to the government's efforts.

70. The Commissioner agrees with the Cabinet Office that there is an important argument to make for transparency in government decisions, and that releasing the withheld information would help inform the public on the factors that led the government in its decision making process. There is also the argument that it could be influential to the wider public debate that was taking place; given the significance of the debate and its implications for the UK as a whole this argument is seen as being important when determining the public interest balance.

71. Furthermore, the polling was paid for by public money, so there is an inherent argument for accountability of government spending. That



money paid for the polling that is being allowed to influence both the development of government policy, and also the wider public debate about the future of Scotland within the UK, so it is only fair that there is a recognition of the public's right to see what it has paid for.

72. However, the Commissioner recognises that reducing the government's ability to analyse the effectiveness of its communications in private during the run-up to the referendum would not have been in the public interest. The government was entitled to advance its policy aim of keeping Scotland within the UK, much in the same way that supporters of independence were entitled to advance theirs.
73. The Commissioner also acknowledges the Cabinet Office's argument that affording the government safe space in its policy making decisions would have been within the public interest, and he considers that this argument carries substantial weight in determining the balance of the public interest in this decision.
74. Similarly, he considers that there is merit in the Cabinet Office's argument for wanting to avoid diverting resources to speculation about how the withheld information had influenced government policy. However, he affords this less weight than is given to the argument for safe space.
75. The Commissioner also accepts the argument that disclosure would inhibit the work of officials and ministers in its dealings with Ipsos MORI. He considers that this is afforded significant weight due to the timing of the request and the fact that the formulation and development of government policy was still ongoing.

#### Balance of the public interest

76. Based on all of the factors listed above, the Commissioner's decision is that the balance of the public interest favours maintaining the exemption and therefore withholding the information from disclosure. Whilst he acknowledges the significant factors in transparency, accountability, and opportunity to help influence public debate, he considers these are outweighed by the factors in favour of maintaining the exemption.
77. As stated earlier, this has been largely influenced due to the timing of the request and the then forthcoming independence referendum. Whilst the factors in favour of maintaining the exemption would remain compelling even once the referendum was finished, subsequent time elapsed would certainly reduce the weight afforded to those factors. This is because the main justification for protecting the information in the

circumstances of this case was that it would influence the referendum and thus potentially have an impact on every person within the UK.

## **Other matters**

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78. Whilst the Commissioner does not require any steps for the Cabinet Office to take, he does wish to draw attention to the length of time it took to complete its internal review. The complainant asked for an internal review soon after the Cabinet Office issued its refusal notice in August, yet the internal review response was not provided to the complainant until November 2014. Given that the Cabinet Office also took three months to substantively consider the request, the Commissioner considers that the Cabinet Office should have been able to provide its internal review response sooner. He therefore asks that the Cabinet Office does not repeat such delays in future.

## Right of appeal

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79. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

80. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

81. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**