

# Decision Notice



Decision 048/2012 Mr Alistair P Sloan and the Scottish Ministers

Options considered following *Cadder* judgement

Reference No: 201100971  
Decision Date: 15 March 2012

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Margaret Keyse**

Acting Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Sloan requested from the Scottish Ministers (the Ministers) information relative to options considered by the Ministers following the Supreme Court Judgement in the case of *Cadder v HMA*. The Ministers responded by providing some information, while withholding the remainder under various exemptions in FOISA. Following a review, Mr Sloan remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that, while the Ministers had correctly withheld certain information in terms of sections 29(1)(a), 30(b) and 36(1) of FOISA, they had partially failed to deal with Mr Sloan's request for information in accordance with Part 1 of FOISA.

The Commissioner found that by incorrectly withholding other information under section 30(b)(i) of FOISA, the Ministers failed to comply with section 1(1). She did not accept that disclosure of this information would, or would be likely to, substantially inhibit the free and frank provision of advice. The Commissioner required the Ministers to provide Mr Sloan with the information she found to have been wrongly withheld.

## Relevant statutory provisions and other sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 29(1)(a) (Formulation of Scottish Administration policy etc.); 30(b)(i) and (ii) (Prejudice to effective conduct of public affairs); 36(1) (Confidentiality)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.



## Background

---

1. On 4 February 2011, Mr Sloan wrote to the Ministers requesting the following information:  
*In October 2010 the United Kingdom Supreme Court delivered its judgment in the case of Cadder v HM Advocate. During debates and in answers to questions the Cabinet Secretary for Justice, Mr Kenny McAskill MSP, advised that many options had been considered in response to the potential outcomes of the case.*  
*Would the Scottish Government, under the terms of FOISA, provide details of what options were considered and release all evidence provided to it in relation to those options, including the option subsequently contained within the Bill passed into law by the Scottish Parliament.*
2. On 11 February 2011, the Ministers acknowledged receipt of Mr Sloan's request.
3. On 17 March 2011, Mr Sloan wrote to the Ministers requesting a review on the basis that they had failed to respond to his request for information.
4. The Ministers notified Mr Sloan of the outcome of their review on 24 May 2011. They provided Mr Sloan with certain information, but informed him that the remainder of the relevant information held was being withheld variously in terms of 25(1), 27(1), 29(1)(a), 29(1)(b), 30(b) and 36(1) of FOISA. The Ministers provided an explanation for their decision under each exemption, including consideration of the public interest.
5. On 26 May 2011, Mr Sloan wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review relative to their decision to withhold information in terms of sections 29, 30 and 36 of FOISA, as outlined above, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Sloan had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

---

7. On 31 May 2011, the Ministers were notified in writing that an application had been received from Mr Sloan and asked to provide the Commissioner with any information withheld from him. The Ministers responded with the information requested, together with a schedule listing the information released and withheld. The case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested.



9. The Ministers responded on 2 August 2011, providing submissions indicating that they were relying upon a number of exemptions with their reasoning for each of them.
10. The relevant submissions obtained from both Mr Sloan and the Ministers will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

---

11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr Sloan and the Ministers and is satisfied that no matter of relevance has been overlooked.
12. In the *Cadder* case, the Supreme Court found the police practice (at that time supported by the relevant provisions of the Criminal Procedure (Scotland) Act 1995) of detaining a suspect at a police station for questioning without access to a solicitor to be incompatible with the European Convention on Human Rights (the ECHR). The Ministers had been preparing for this eventuality and, following the Supreme Court judgement, prepared emergency legislation (which was approved by the Scottish Parliament) amending the relevant provisions of the 1995 Act. The amendments provided an immediate right of access to a solicitor, while extending the initial period of detention from 6 to 12 hours (and providing for an extension of up to a further 12 hours).
13. In withholding the information from Mr Sloan, the Ministers relied upon the exemptions in sections 28(1), 29(1)(a), 29(1)(b), 30(b)(i) and (ii), and 36(1) of FOISA, either individually or in combination (see attached Schedule). The Commissioner will first of all consider the exemption contained in section 36(1) of FOISA before considering other exemptions relied upon by the Ministers.
14. Where the Commissioner concludes that information contained in a document was correctly withheld under one of the exemptions applied, she is not required (and does not intend) to consider whether that information was also correctly withheld in terms of any other exemptions applied.

### Section 36(1) – Confidentiality

15. The Ministers contended that the information contained in a number of documents (see attached Schedule) was exempt from disclosure in terms of section 36(1) of FOISA.
16. The exemption in section 36(1) of FOISA exempts from disclosure information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. Among the types of communication which fall into this category are those which are subject to legal professional privilege, one aspect of which is legal advice privilege. Legal advice privilege covers communications between lawyer and client in the course of which legal advice is sought or given.



17. For legal advice privilege to apply, certain conditions must be fulfilled. The communication must be with a professional legal advisor, such as a solicitor (including, in most cases, an in-house one) or an advocate. The legal adviser must be acting in their professional capacity as such and the communication must occur in the context of their professional relationship with their client. The information must be confidential between lawyer and client: privilege does not extend to matters known to the legal adviser through sources other than the client or to matters in respect of which there is no reason for secrecy.
18. The Ministers submitted that, by its very nature, the majority of the discussion and preparation in respect of the *Cadder* decision and the emergency legislation took the form of legal opinion and advice provided by the Scottish Government Legal Directorate (SGLD), the Law Officers, Crown Office solicitors and Counsel.
19. The Ministers considered that the majority of the information withheld clearly fell within section 36(1) of FOISA, as it related to communications between client and legal adviser, the information being such that a claim of confidentiality could be maintained in legal proceedings.
20. The Commissioner has considered the information withheld under section 36(1) and is satisfied that it comprises communications with the various legal professionals identified by the Ministers in the course of which legal advice is requested or provided, or relates to the consideration of such advice within various departments of the Scottish Government.
21. Mr Sloan has suggested that the Cabinet Secretary waived privilege in the withheld information, by indicating that the Lord Advocate supported the Ministers' position on the legislation. The Commissioner cannot, however, accept that the statement Mr Sloan has referred to in this context can be accepted as having conveyed the substance of any of the withheld legal advice, as would be required for privilege to be waived or for the quality of confidence in that advice to be lost.
22. Having considered the content of the documents to which the Ministers have applied section 36(1), and the circumstances under which it was obtained, the Commissioner is satisfied that the information meets all of the conditions set out in paragraph 17 and is therefore exempt information under section 36(1) of FOISA.
23. The exemption in section 36(1) is, however, a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 36(1), the Commissioner must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.



*Public interest test*

24. Mr Sloan submitted that there was a clear public interest in the public knowing upon what information the Scottish Ministers had based emergency legislation that gave the police and other agencies a right to detain a person for a period of up to 24 hours. He also submitted that this represented an infringement by the State on a person's general right to liberty and security guaranteed by the ECHR, as enacted domestically in Schedule 1 of the Human Rights Act 1998.
25. The Ministers argued that it was vital to the successful working of any solicitor/client relationship that both parties could be confident that all information passing between them would be treated confidentially. It is crucial, they submitted, to the quality and efficacy of the advice and representation given by the solicitors that they were in possession of a full and frank account of the facts and the position of their client, in order that they could advise fully and freely. The Ministers argued that any impediment to this full and frank exchange would gravely undermine the solicitor/client relationship and the usefulness of the advice provided.
26. The Ministers acknowledged a significant public interest in transparency and accountability, and (as Mr Sloan had stated) in ensuring that legislation was competent in terms of adherence to the right to liberty and security guaranteed by the ECHR.
27. On the question of infringement of the ECHR, the Ministers drew attention to paragraph 3.3 of the Scottish Ministerial Code<sup>1</sup>, which refers to the statement on legislative competence the responsible Minister is required to give to the Scottish Parliament on introducing a Bill. This states that any such statement "will in practice have been cleared with the Law Officers". Referring specifically to the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Bill (which introduced the emergency legislation referred to in paragraph 12 above), the Ministers noted that both the Cabinet Secretary for Justice and the Presiding Officer had made the appropriate statements of legislative competence under section 31 of the Scotland Act 1998.
28. The Ministers also submitted that the Bill had not been referred by any of the Law Officers under section 33 of the Scotland Act (the power to refer the question of competence of any Bill to the Supreme Court for decision), nor had an order been made by the Secretary of State under section 35 of that Act (the power to intervene and prevent a Bill gaining Royal Assent if there are reasonable grounds to believe that the Bill is incompatible with an international obligation, such as the ECHR).
29. The Ministers concluded that there were adequate and proven checks in place to address the public interest in ensuring that the legislation was legally competent. In their opinion, there was a greater public interest in enabling Government decisions on legislation to be taken in a fully informed legal context (which required a degree of protected confidentiality) and ensuring that the Government's ability to defend its legal interest was not prejudiced by inappropriate disclosure of information and legal analysis.

<sup>1</sup> <http://www.scotland.gov.uk/Resource/Doc/276226/0082926.pdf>



30. The Ministers further contended that any public interest in seeing this information was outweighed by the public interest in ensuring that legal advisers and their clients could discuss relevant issues and give and receive legal advice in confidence. It was also, the Ministers believed, in the public interest that the government could receive the most comprehensive legal advice about its proposed actions. Release of such information was likely to erode the trust which necessarily existed between a client and legal adviser.
31. As the Commissioner has noted in a number of previous decisions, the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. Many of the arguments in favour of maintaining confidentiality of communications were discussed in a House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England (2004) UKHL 48*, and the Commissioner will apply the same reasoning to communications attracting legal professional privilege generally.
32. Having considered the public interest arguments advanced on both sides, and while accepting that there might be reasons which would justify disclosing legal advice of this kind in certain circumstances, in this instance the Commissioner is not satisfied that the public interest in disclosure of this particular information is sufficiently compelling to outweigh the strong public interest in maintaining the confidentiality of communications between legal advisor and client. Consequently, she accepts that the Ministers correctly withheld the information to which they applied section 36(1) of FOISA.
33. Given that the Commissioner has concluded that this information was correctly withheld under section 36(1) of FOISA, she is not required (and does not intend) to consider any other exemption applied in relation to that information.

#### **Section 29(1)(a) – Formulation of Scottish Administration policy**

34. The Ministers submitted that the information contained in a number of documents (see attached Schedule) was exempt from disclosure in terms of section 29(1)(a) of FOISA. As the Commissioner has concluded that the information in some of these documents was properly withheld under section 36(1) of FOISA, the Commissioner need only consider whether the information contained within the remaining documents was correctly withheld in terms of section 29(1)(a).
35. Under section 29(1)(a) of FOISA, information held by the Scottish Administration (the Ministers) is exempt information if it relates to the formulation or development of government policy. The Commissioner takes the view that "formulation" suggests the early stages of the policy process where options are identified and considered, risks are identified, consultation takes place and recommendations and submissions are presented to Ministers. "Development" suggests the processes involved in reviewing, improving upon or amending existing policy: it can involve piloting, monitoring, analysing, reviewing or recording the effects of existing policy.
36. For information to fall under this exemption, it need only "relate" to the formulation or development of government policy.



37. The Ministers submitted that the majority of these documents provided a variety of options for further consideration, or summaries of discussions of options, papers, scenario development, policies and legislative options that had taken place.
38. The Commissioner is satisfied that the information to which the Ministers have applied this exemption relate in their entirety to the formulation of the Scottish Ministers' policy with respect to the action to be taken as a result of the Supreme Court decision in the *Cadder* case.
39. Whilst the Ministers did not specifically apply section 29(1)(a) to withhold document 68, given its content and the fact that that document 68 is contained within document 70 (to which the Ministers did apply section 29(1)(a)), the Commissioner also considers document 68 to be covered by this exemption.
40. The exemption in section 29(1)(a) is, however, a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 29(1)(a), the Commissioner must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

#### *Public interest test*

41. The Ministers recognised a public interest in ensuring transparency and accountability in the decision making of government. However, they considered this to be outweighed by the need for both Ministers and officials to have the space in which to fully discuss and develop policies and responses with candour, especially in regard to such a controversial issue as the UK Supreme Court ruling.
42. The Ministers argued that, if these documents were to be released, particularly early drafts, officials would exercise an increased degree of caution in preparing such papers in future. There would therefore be a qualitative change in the views expressed, the recommendations made and the substance of the information contained in those papers. For example, the Ministers considered it far less likely that a full range of options would be put forward, particularly when not all options would necessarily be in line with stated policy or be politically acceptable. In addition, fear over release might incline officials to play down or even ignore any concerns they might have. All of this, the Ministers submitted, would limit the range of options considered, rendering the policy-making process less robust.
43. The Ministers believed that if it were generally understood that positions set out in policy papers - particularly drafts - were to be released at an early stage of the debate, the way in which these positions might be interpreted by the public would have a stronger influence on the way policy was developed. They contrasted this with a more considered approach, looking at a full range of options, including those less obviously acceptable. They also suggested that Ministerial decisions might ultimately be influenced by external factors not fully articulated in the recorded discussion. In the Ministers' view, therefore, early or premature release may satisfy short-term public curiosity, but would not meet the longer term public interest in mature policy making.





44. The Ministers reiterated that the topic in question remained very much an ongoing area of policy, which was still evolving and had not yet been fully implemented. They contended that disclosure at this time carried with it the inherent danger that certain arguments might be taken out of context, open to misrepresentation or perceived to be misleading. At a time when further consideration and change might yet be required following the Independent Review, the Ministers considered disclosure to be inappropriate.
45. Having considered the content of the information withheld under this exemption in context and the information already publicly available (which to a certain extent satisfies the public interest in disclosure), the Commissioner concludes in this case that the public interest in maintaining the exemption outweighs the public interest in disclosure. Consequently, she is satisfied that the Ministers correctly withheld the information to which they have applied the exemption in section 29(1)(a) of FOISA.
46. Given that the Commissioner has concluded that this information was correctly withheld under section 29(1)(a) of FOISA, she is not required (and does not intend) to consider any other exemptions applied by the Ministers in relation to that information.

#### **Section 30(b)(i) and (ii) – Prejudice to effective conduct of public affairs**

47. The Ministers intimated that they were relying upon sections 30(b)(i) and (ii) of FOISA in withholding certain of the information (see attached Schedule). In order for the Ministers to rely on these exemptions, they must show that the disclosure of the information would (or would be likely to) inhibit substantially the free and frank provision of advice (section 30(b)(i)) or the free and frank exchange of views for the purposes of deliberation (section 30(b)(ii)). The exemption is subject to the public interest test in section 2(1)(b) of FOISA.
48. Given that the Commissioner has decided that the information contained in some of these documents was correctly withheld under sections 36 or 29, as indicated on the attached Schedule, she need only consider whether the information contained in the remaining documents was correctly withheld in terms of section 30.
49. It is the Commissioner's view, as stated in previous decisions, that the standard to be met in applying the tests contained in these exemptions is high. In applying the exemptions, the chief consideration is not whether the information constitutes advice or opinion, but whether the disclosure of that information would, or would be likely to, inhibit substantially (as the case may be) the provision of advice or the exchange of views. The inhibition in question must be substantial and therefore of real and demonstrable significance.
50. As with other exemptions importing a similar test, the Commissioner expects authorities to demonstrate a real risk or likelihood that actual inhibition will occur at some time in the near (certainly the foreseeable) future, not simply that inhibition is a remote or hypothetical possibility. For inhibition to be likely, there would require to be at least a significant probability of it occurring.



51. Each request should be considered on a case by case basis, taking into account the effects on the future provision of advice or exchange of views anticipated from disclosure of the particular information involved. The content of the withheld information will require to be considered, taking into account factors such as its nature, subject matter, manner of expression, and also whether the timing of disclosure would have any bearing: releasing advice or views whilst a decision was being considered, and for which further views were still being sought, for example, could be more substantially inhibiting than disclosure once advice had been taken.
52. In this case, the Ministers submitted that their rationale for the application of these exemptions was to ensure that they had an ability, and continued to have an ability, to communicate freely and frankly, pointing out that an organisation's position on any issue does not typically emerge fully formed. Rather, it was usually the result of careful discussion and the exchange of views of various internal and external stakeholders. For the Government, this process included advice to Ministers, who must make the ultimate judgement.
53. It was vital, therefore, that Ministers and officials felt able to (and did) express and debate their views frankly and confidentially. As part of this process, they needed to be able to debate all options rigorously, to expose all their merits and demerits and to understand their possible implications, without the fear of premature disclosure which might impair candour or close off discussion and development of better options.
54. The Ministers submitted that the preparation for the emergency legislation was fast moving and required stakeholders and legal advisers to be open and frank about the possible impacts of an adverse decision. The Ministers drew attention to the content of the information, contending that a number of issues relating to the impact of the decision remained live, still evolving and not fully implemented.
55. The Ministers considered it very likely that exchanges of this nature would be jeopardised if the communications were considered suitable for release while the issues are still relevant to the development of current policy and thinking in what remained a sensitive area. They submitted that officials and stakeholders could feel constrained from offering full and frank advice and views on future occasions if they were concerned that their comments would be made public in such circumstances. This would be to the substantial detriment of the policy and decision-making processes.
56. The Commissioner has considered the information withheld under section 30(b)(i) and (ii) and the relative submissions made by the Ministers. Taking into account the timing of the relevant exchanges and those involved, in addition to the content of the information, the Commissioner accepts the application of the exemption in section 30(b)(i) of FOISA to the information in document 33, and the application of that in section 30(b)(ii) to the information in document 42.



57. The Commissioner cannot, however, accept the Ministers' contention that the information in document 25 should be considered exempt under section 30(b)(i). She can identify nothing in the content of this information which might reasonably be expected to have any significant inhibiting effect on the free and frank provision of advice in future. None of the views or comments in the information are expressed with any notable degree of frankness or candour: on the contrary, the content of the information appears measured and considered in relation to the subject matter. In the circumstances, she is not persuaded that any specific inhibiting effect the disclosure of this information would, or would be likely to, have has been sufficiently clearly articulated by the Ministers.

*Public interest test*

58. Having found that the exemptions in section 30(b)(i) and (ii) respectively were properly applied to the information in documents 33 and 42, the Commissioner must go on to consider the application of the public interest test to this information.
59. As indicated above, Mr Sloan highlighted what he considered to be a clear public interest in knowing upon what information the Ministers had based emergency legislation with significant consequences. The Ministers acknowledged a significant public interest in transparency and accountability in government decision making.
60. On the other hand, the Ministers identified a vital public interest in Ministers, officials and stakeholders having adequate public space to consider options and debate all relevant issues. Noting that this remained a developing area of policy, they considered the public interest in maintaining the exemption to outweigh that in disclosure.
61. The Ministers referred to the strong public interest in high quality policy- and decision-making, noting that this required rigorous and candid consideration of all available options. Ministers also required high quality advice, particularly in contentious areas of policy-making. Substantial inhibition to these processes, brought about by the prospect of disclosure in the near future, would be to the detriment of efficient, high quality decision-making.
62. The Commissioner has considered these arguments carefully, in the context of the information in documents 33 and 42. Taking account of the extent to which developments in the relevant areas remained ongoing at the time the Ministers dealt with Mr Sloan's information request and request for review, and noting the significance to the process of those involved in the relevant exchanges, the Commissioner accepts in the circumstances that the public interest in disclosure was outweighed by the public interest in maintaining the relevant exemption. Consequently, she accepts that these documents were properly withheld under (respectively) sections 30(b)(i) and 30(b)(ii) of FOISA.



## Conclusion

63. In conclusion, the Commissioner finds that Ministers correctly withheld the information in a number of documents in terms of sections 29(1)(a), 30(b)(i), 30(b)(ii) and 36(1) of FOISA (see attached Schedule). She is not, however, satisfied that the Ministers were correct in withholding document 25 (see Schedule) under section 30(b)(i) of FOISA. Given that she is satisfied that all of the information withheld under section 28(1) of FOISA was properly withheld under other exemptions, she is not required to consider the application of that exemption in this case.
64. The Commissioner therefore requires the Ministers to provide Mr Sloan with the information in document 25.

## DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Sloan.

The Commissioner finds that the Ministers were entitled to withhold certain information under sections 29(1)(a), 30(b)(i), 30(b)(ii) and 36(1) of FOISA.

The Commissioner also finds, however, that by withholding the information in document 25 in terms of section 30(b)(i) of FOISA, the Ministers failed to comply with Part 1 of FOISA and in particular section 1(1).

The Commissioner therefore requires the Ministers to provide Mr Sloan with the information in document 25.

The information must be provided to Mr Sloan by 30 April 2012.



## Appeal

---

Should either Mr Sloan or the Scottish Ministers wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Acting Scottish Information Commissioner**  
**15 March 2012**



## Appendix

---

### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

##### 29 Formulation of Scottish Administration policy etc.

- (1) Information held by the Scottish Administration is exempt information if it relates to-

- (a) the formulation or development of government policy;

...

##### 30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-

- (i) the free and frank provision of advice; or



- (ii) the free and frank exchange of views for the purposes of deliberation; or

...

### **36 Confidentiality**

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...



## Schedule of documents

N/C = Not Considered

DOCUMENT NUMBER	DATE	DOCUMENT	Exemption applied	Correctly Withheld
12	18/08/2010	SGLD options paper – appeals	36(1)	Yes - withhold
18	07/07/2010	Opinion of Counsel for Crown Office (Cadder and Salduz)	36(1)	Yes - withhold
19	30/10/2010	Cabinet Paper	29(1)(a)	Yes - withhold
21	04/2010	Salduz – Impact and Options paper from COPFS	29(1)(a) 30(b)(i)	Yes – withhold N/C
22	02/08/2010	COPFS Legal Advice to Law Officers – time limitation of appeals	36(1) 30(b)(i)	Yes – withhold N/C
23	17/09/2010?	Time limit for bringing Convention rights proceedings under the Scotland Act 1998 – SGLD paper for Working Group	36(1) 30(b)(i)	Yes - withhold N/C
24		COPFS note on change of law – The Rule in R v Cottrell	36(1) 30(b)(i)	Yes - withhold N/C
25	25/08/2010	COPFS paper - Cadder – Impact of Decision	30(b)(i)	No – release
26	09/2010	Cadder – Reforms of Criminal Procedure Note from James Wolffe QC – independent legal advice to Law Officers	36(1)	Yes - withhold
27	22/09/2010	Internal note on Unlawful Detention (SGLD)	36(1)	Yes - withhold
28	23/09/2010	Internal Note on R v Cottrell and Fletcher (SGLD)	36(1) 28(1)	Yes - withhold N/C
29	28/07/2010	Advice to Cabinet Secretary Cadder v HMA – Legal Representation in Custody – Progress Report	29(1)(a) 30(b)(ii)	Yes – withhold N/C
30	03/08/2010	Advice to Cabinet Secretary Cadder v HMA – Legal Representation in Custody – Discussion with MoJ Officials	29(1)(a) 30(b)(i)	Yes – withhold N/C
31	20/08/2010	Advice to Cabinet Secretary and Law Officers Cadder v HMA – Legal Representation in Custody – Options for adverse judgment in relation to settled cases and appeals	28(1) 29(1)(a) 30(b)(i)	N/C Yes – withhold N/C
32	31/08/2010	Advice to Cabinet Secretary and Law Officers Cadder v HMA – Legal Representation in Custody – Options for adverse judgment in relation to settled cases and appeals	36(1) 29(1)(a) 30(b)(i)	Yes - withhold N/C N/C



Decision 048/2012  
Mr Alistair P Sloan  
and the Scottish Ministers



33	02/08/2010	SLAB paper on proposals for a police station duty scheme	30(b)(i)	Yes - withhold
34	12/07/2010	Early DRAFT ACPOS paper on detention periods	29(1)(a) 30(b)(i)	Yes – withhold N/C
35	14/10/2010	ACPOS paper on potential review mechanism for proposed 24 hour period (marked 'policy under development')	29(1)(a) 30(b)(i)	Yes – withhold N/C
36	25/05/2010	SGLD note on Salduz/Cadder legislative options - order making procedures	36(1)	Yes - withhold
37	25/05/2010	SGLD options paper on legislative responses to Cadder	36(1)	Yes - withhold
38	13- 14/07/2010	SGLD paper on Westminster options for legislative approach to Cadder and COPFS comments	36(1) 29(1)(a)	Yes - withhold N/C
39	16/07/2010	SGLD paper on Crown Counsel opinion	36(1)	Yes - withhold
40	02/09/2010	SGLD note to the Law Officers	36(1)	Yes - withhold
41	6-9/08/2010	Draft submission to Law Officers and Cabinet Secretary for Justice – COPFS comments	36(1)	Yes - withhold
42	20/08/2010	Note of meeting between Lord President and Cabinet Secretary	30(b)(i) 30(b)(ii)	N/C Yes - withhold
43	13/09/2010	Emergency Bill draft instructions	36(1)	Yes - withhold
44	15/09/2010	Instructions to Parliamentary Counsel	36(1)	Yes - withhold
45	21/09/2010	E-mail OSPC to SGLD on instructions	36(1)	Yes - withhold
46	23/09/2010	Note – SGLD to policy re instructions	36(1)	Yes - withhold
47	09/2010	SGLD to OSPC on instructions	36(1)	Yes - withhold
48	28/09/2010	SGLD and policy exchange on instructions and policy	36(1)	Yes - withhold
49	1/10/2010	SGLD to OSPC - instructions	36(1)	Yes - withhold
50	15/09- 01/10/2010	E-mail exchange between SGLD, Crown and Policy on instructions	36(1)	Yes - withhold
51	1/10/2010	Exchange between OSPC, SGLD and Policy on section of the draft bill	36(1)	Yes - withhold
52	4/10/2010	Policy to SGLD noting Crown comments on draft sections	36(1)	Yes - withhold
53	04/10/2010	Policy to SGLD comments on instructions/draft sections	36(1)	Yes - withhold
54	04/10/2010	Note of meeting with Law Society	29(1)(a)	Yes - withhold
55	01- 06/10/2010	Policy comments to SGLD and OSPC on sections	36(1)	Yes - withhold
56	06/10/2010	SGLD exchange on point of law	36(1)	Yes - withhold
57	06/10/2010	SGLD policy exchanges on drafting/policy	36(1)	Yes - withhold
58	08/10/2010	Advice to Minister and exchange	36(1)	Yes - withhold

Decision 048/2012  
Mr Alistair P Sloan  
and the Scottish Ministers



		between SGLD and policy on detention period		
59	08/10/2010	Instructions and policy exchange with SGLD on retrials and 60 day period for indictment	36(1)	Yes - withhold
60	08/10/2010	Exchange on detention	36(1)	Yes - withhold
61	08/10/2010	OSPC advice to SGLD and policy	36(1)	Yes - withhold
62	08/10/2010	COPFS and policy exchange on 60 day limit	36(1) 29(1)(a)	Yes – withhold N/C
63	11/10/2010	COPFS and policy exchange on detention	29(1)(a)	Yes - withhold
64	01- 12/10/2010	Exchange with COPFS – comments on draft Bill instructions	36(1)	Yes - withhold
65	12/10/2010	SGLD advice to Lord Advocate and Minister for Party Business	36(1)	Yes - withhold
66	12/10/2010	Exchange with SGLD and policy on detention options	36(1)	Yes - withhold
67	13/10/2010	Exchange with SGLD and policy on detention options	36(1)	Yes - withhold
68	13/10/2010	Letter to Secretary of State for Justice	28(1) 29(1)(a) 29(1)(b)	N/C Yes – withhold N/C
69	13/10/2010	Policy SGLD exchange on approach to UK Government	36(1) 28(1)	Yes - withhold N/C
70	14/10/2010	Letter to Secretary of State for Justice and note to UK Government colleagues	28(1) 29(1)(a) 29(1)(b)	N/C Yes - withhold N/C
71	13/10/2010	Report of comments by Lord Carloway in relation to SGLD advice to Lord Advocate and Minister for Party Business	36(1)	Yes - withhold
72	14/10/2010	Exchange between SGLD and OAG	36(1) 28(1)	Yes – withhold N/C
73	14/10/2010	COPFS, SGLD and Policy exchange on Bill instructions	36(1)	Yes - withhold
74	15/10/2010	Note for the Opinion of the Scottish Law Officers	36(1)	Yes - withhold
75	15/10/2010	Draft Bill and Background Note – SGLD to LSAG	36(1)	Yes - withhold
76	15/10/2010	SGLD to OSPC – draft Bill instructions	36(1)	Yes - withhold
77	15/10/2010	Minute to Cabinet Secretary on the detention period and 60 day limit	36(1) 29(1)(a) 30(b)(i)	Yes - withhold N/C N/C
78	18/10/2010	Cabinet Secretary's comments on Minute on the detention period and 60 day limit	36(1) 29(1)(a) 30(b)(i)	Yes – withhold N/C N/C

Decision 048/2012  
Mr Alistair P Sloan  
and the Scottish Ministers



79	18/10/2010	Policy exchange with SGLD and SPS legal services on Bill instructions	36(1)	Yes - withhold
80	18/10/2010	Policy exchange with SGLD and SPS legal services on Bill instructions	36(1)	Yes - withhold
81	18.10.2010	Note of meeting with SGLD and OSPC on Bill	36(1)	Yes - withhold
82	19/10/2010	SGLD and Policy exchange on ACPOS note on custody review	36(1)	Yes - withhold
83	10/2010	Note for the opinion of the Scottish Law Officers on competency	36(1)	Yes - withhold
84	16/09/2010	Email on Bills of Suspension and Advocation	29(1)(a) 30(b)(i)	Yes – withhold N/C