

### An exemption applies, subject to the public interest test

An exemption under section 30(c) of FOISA applies to some the information you have requested. We consider it necessary that we are able to engage in discussion on the future development of guidance and to seek the views of relevant internal and external stakeholders, including COSLA and local authorities on draft material and other issues to ensure that these are supported as robustly as possible and that sufficient engagement has been undertaken, sought, communicated and developed. This will ensure that we are engaging as effectively as possible in work that is in the interests of the people of Scotland.

The process of finalising the guidance was a collaborative one. Given the serious nature of the topic, it was important to get the message and the language absolutely right in order to maximise the effectiveness, and as such the process was one where repeated versions of guidance were considered and commented upon in order to finalise an agreed version for publication. Releasing the content of the draft guidance with track changes and comments or content of emails where comments were made would make it very hard to engage stakeholders in any future collaboration about education guidance, or similar guidance of this nature knowing that their input, views, criticism etc were potentially going to be subjected to public scrutiny when these were given in what is widely considered to be a safe and confidential environment. They will also be reluctant to provide their views as fully and frankly, either in writing or at meetings if they believe that their views are likely to be disregarded through the publication of initial drafts. This would expose early thinking and wording which would be likely to undermine their trust in the Scottish Government which in turn would substantially inhibit communications of this type of issue in the future.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is some public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate and we also acknowledge the public interest in relation to the full time re-opening of schools. However, given the importance of getting the process and guidance for re-opening schools right, the ongoing work of the SG to build and maintain positive relationships with COSLA, local authorities and other relevant stakeholder, we believe there is a greater public interest in allowing Ministers and officials a private space within which to communicate as part of the process of exploring and refining their guidance before reaching a settled view. This private space is essential to enable all options to be properly considered in confidence with stakeholders, so that good decisions can be taken based on fully informed advice and evidence. Disclosure of early iterative versions and emails would be likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders in future, which in turn will undermine the quality of the decision making process, which would not be in the public interest.

### An exemption applies

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party, ie names/contact details of individuals, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018.

This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.