

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 the names and contact details of individual members of staff, 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.

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Section 28(1) – Relations within the United Kingdom

An exemption under section 28(1) of FOISA applies to some the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially relations between the Scottish Government and the UK Government. It is essential for the effective administration of the UK as a whole that there should be regular, and often private, communications between the Scottish Government, the UK Government and the other devolved administrations. The release of these communications about will mean that the UK Government is likely to be more reluctant to share such information with the Scottish Government in future, which would reduce both the frequency and openness of communications between the Scottish Government and other UK administrations.

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 a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in maintaining good relations between the Scottish Government and the UK Government and in protecting the free exchange of information between the administrations to ensure that we keep each other fully and regularly informed about matters of mutual interest, such as this. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

Section 30(c) – substantial prejudice to the effective conduct of public affairs

An exemption under section 30(c) of FOISA applies to some the information requested. It is essential for officials to be able to communicate, often in confidence, with external stakeholders on a range of issues. Disclosing the content of these communications, particularly without the consent of the stakeholder, is likely to undermine their trust in the

Scottish Government and will substantially inhibit communications on this type of issue in the future. These stakeholders will be reluctant to provide their views fully and frankly if they believe that their views are likely to be made public, particularly while these discussions are still sensitive. This would significantly harm the Government's ability to carry out many aspects of its work, and could adversely affect its ability to gather all of the information it needs to make fully informed decisions.

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