EXEMPTIONS **ANNEX B**

Section 25 – Information otherwise accessible

Section 25 of the Freedom of Information (Scotland) Act 2002 (FOISA) exempts information from disclosure where the requester can reasonably obtain the information without asking for it under FOISA. It has a different focus from most other exemptions. It is not about withholding information from the public; it recognises that where information is already available, there is no need to provide an alternative right of access to it through FOISA. Where the exemption applies, authorities should tell the requester why they believe the information is available through other means. This will normally include telling the requester where they can obtain the information.

Section 28(1) – relations within the UK [in relation to communications between the SG and another UK administration]

An exemption under section 28(1) of FOISA (relations within the UK) applies to some of 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 COP26 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 COP26. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

Section 29(1)(a) - Formulation of Scottish Administration Policy

Section 29 of the Freedom of Information (Scotland) Act 2002 (FOISA) exempts information from disclosure if it relates to the formulation or development of government policy, Ministerial communication, or the operation of any Ministerial private office.

It is essential for officials to be able to communicate, often in confidence, internally and with external stakeholders on a range of issues, including COP26.

Disclosing the content of these communications, particularly without the consent of partner organisations would inhibit the programme development process. 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 development and discussions are ongoing. 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 evidence it needs to make fully informed policies. Plans for COP26 will be made public in due course.

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 allowing Ministers and officials a private space within which to communicate and develop policy and programmes as part of the process of developing the plans for COP26. This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence, such as that provided by officials to Ministers and stakeholders involved. Premature disclosure will undermine the quality of the policy and programme development and decision making process, which would not be in the public interest.

Section 30(c) – substantial prejudice to the effective conduct of public affairs in relation to communications with external stakeholders].

An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information requested. It is essential for officials to be able to communicate, often in confidence, internally and with external stakeholders on a range of issues, including COP26. 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 ongoing. 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 evidence it needs to make fully informed policies.

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 allowing Ministers and officials a private space within which to communicate with appropriate external stakeholders as part of the process of exploring and refining the Government's position on COP26, until the Government as a whole can adopt a decision that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence, such as that provided by the stakeholders involved. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the decision making process, which would not be in the public interest.

Section 38(1)(b) Personal information

Some information has been redacted from the Annex provided as it is personal data consisting of names and contact details of individuals which is exempt from disclosure under section 38(1)(b) (personal information).

Section 38(1)(b) can be applied when disclosure of the information requested would contravene the data protection principles in Article 5(1) of the GDPR. 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.