

FREEDOM OF INFORMATION REQUEST – CASE REFERENCE 202000090391

As stated in the main body of this response, an exemption under Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) applies to the minutes of the 30 June 2020 Cabinet meeting that you requested.

Paragraph 2.1 of the Scottish Ministerial Code provides that “the privacy of opinions expressed and advice offered within the Government should be maintained” at all times.

Cabinet papers, including the minutes of Cabinet meetings, form an essential, practical tool to inform and assist collective discussion in the private space which Ministers need to reach agreed positions.

The weekly meeting of the Scottish Cabinet is the highest decision-making forum within the Scottish Government, and it follows that all information considered by Cabinet must be handled with great care. Properly functioning Cabinet processes are generally recognised to be of vital public interest: Cabinet government is based on the principle of collective responsibility, which the Scottish Ministerial Code, and the UK Ministerial Code, define in the following terms:

“The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained. ... The internal processes through which a Government decision has been made should not normally be disclosed.” (*Scottish Ministerial Code, 2018 edition, paragraphs 2.1 and 2.4*)

Cabinet minutes are invariably drafted on the basis of the working assumption that they will not be disclosed until a significant amount of time has elapsed.

Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) recognises the need to allow Ministers some private space for discussion.

The minutes of the 30 June Cabinet meeting form part of wider decision-making processes in relation to the development of number of different policy areas, which are still ongoing.

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 collective responsibility and in allowing Ministers a private space within which policy positions can be explored and refined, until the Government as a whole can reach a decision that is sound and likely to be effective. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the policy-/decision-making process.