

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies

Section 38(1)(b) - personal information

An exemption under section 38(1)(b) of FOISA applies to some of the information you have requested because it is personal data of a third party, i.e. names and 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.

Section 30(b)(i) – free and frank provision of advice

Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) and Section 30(b)(ii) (free and frank exchange of views for the purposes of deliberation) applies to some of the information requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. These exemptions recognise the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view.

These exemptions are 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 a private space within which officials can provide full and frank advice to Ministers. This private thinking space is essential to enable all options to be properly considered, in this case how best to respond to enquiries received by the Scottish Government about matters of public concern, based on the best available advice, so that good decisions can be taken.