

ANNEX C

An exemption applies:

Section 38(1)(b) Personal information

Some information has been redacted from Annex B 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.

An exemption applies, subject to the public interest test:

Section 29(1)(a) Formulation or development of Scottish Government Policy

An exemption under section 29(1)(a) (Ministerial Communications) of FOISA applies to some of the information you have requested. This section states that information is exempt from disclosure if it pertains to the formulation or development of government policy. This encapsulates the advice given to Scottish Ministers on specific policy decisions, where risks are identified and specific

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recommendations are offered.

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 release of this information as part of an open, transparent and accountable government, and to inform public debate. However, this is outweighed by the public interest in the development of accurate and well-informed policy based on advice given to Ministers.

Section 30(b)(i) Free and frank provision of advice

An exemption under section 30 (b) (i) (Substantial Inhibition of free and frank provision of advice) of FOISA applies to some of the information you have requested. This section states that information is exempt from disclosure if it were to substantially inhibit the free and frank provision of advice and views/opinions.

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 release of this information as part of an open, transparent and accountable government, and to inform public debate.

However, this is outweighed by the public interest in the free and frank provision of advice between Officials and Scottish Ministers to develop accurate and well-informed policy decisions.

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

Further information was not provided as an exemption under **Section 30(b)(ii)** - Substantial inhibition of free and frank exchange of views for the purposes of deliberation – was applied.

Generally, the Scottish Government is transparent in its relations with third parties. However, communication with external organisations takes place in a wide range of circumstances, and there will be occasions where we need to withhold some or all that communication under the following exemption, section 30(b)(ii) (substantial inhibition of free and frank exchange of views for the purposes of deliberation).

It is essential for Ministers to be able to communicate with external stakeholders on a range of issues across their portfolios. Disclosing the content of such communications, particularly without the consent of the stakeholder, is likely to undermine their trust in Ministers and make them reluctant to communicate, or at least make them much more circumspect in what they say. This would significantly harm Ministers' ability to carry out many aspects of their work, and could adversely affect their ability to gather all of the evidence they need to make fully informed decisions.

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

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within which to exchange free and frank views. Preventing this would significantly harm Ministers' ability to carry out many aspects of their work, and could adversely affect their ability to gather all of the evidence they need to make fully informed decisions and premature disclosure would undermine the quality of policy and programme development, which would not be in the public interest.

Yours sincerely

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