

ANNEX C

Exemptions

Section 38(1)(b) – personal information

An exemption under section 38(1)(b) of FOISA (personal information) applies to a small amount of the information requested because it is personal data of a third party. 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 29(1)(a) – formulation or development of government policy

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation and development of the Scottish Government’s policy proposals.

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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications.

Sections 30(b)(i) and 30(b)(ii) – free and frank advice and exchange of views

An exemption under section 30(b)(i) and 30(b)(ii) of FOISA (free and frank advice and exchange of views)) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views and provision of advice. This exemption recognises the need for officials to have a private space within which to discuss options freely and provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice and free and frank exchange of views will substantially inhibit the provision of such advice and the candour of discussions in the future.

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 a private space within which officials can provide full and frank advice and free and frank exchange of views to Ministers, as part of the process of exploring and refining the Government's position and development of the Scottish Government's policy proposals until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues and free and frank exchange of views between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.