

ANNEX A

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies, subject to the public interest test

An exemption under section 27(1) of FOISA applies to some the information requested because we intend to publish that information within 12 weeks of the date of your request. We consider that it is reasonable to withhold the information until that date, rather than release this information before the planned publication date.

An exemption under section 28(1) of FOISA (relations within the UK) applies to some of the information you have requested. This exemption applies because disclosure would, or would likely to, inhibit substantially provision of advice between UK and Scottish government departments.

An exemption under section 29(1)(a) Formulation or Development of Scottish Government Policy of FOISA applies to some of the information you have requested because it relates to the formulation of the Scottish Government's policy on drugs deaths and the Drugs Deaths Taskforce.

An exemption under section 29(1)(b) (Ministerial Communications) of FOISA applies to some of the information you have requested because it relates to communication on the Scottish Government's policy on drugs deaths and the Drugs Deaths Taskforce.

An exemption under section 30(b)(i) (free and frank provision of advice) and section 30(b)(ii) (free and frank 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 provision of advice or views. This exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions or advice on drugs deaths or the Drugs Deaths Taskforce will substantially inhibit these in the future, particularly because these are live policy issues.

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 exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemptions. 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, in relation to exemption 27 we recognise that there is some public interest in release to inform ongoing public debate and knowledge, and this will be met by our planned publication. In the meantime, there is a greater public interest in taking the time necessary to ensure the information has been properly collated and checked before it is published as planned. Also, we see no public interest in disrupting our programme of work to release the information ahead of the intended publication date. For exemption 29(1)(a), 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. Their candour in doing so will be affected by their assessment of whether the discussions on drugs deaths or the Drugs Deaths Taskforce will be disclosed in the near future, when it may undermine or constrain the Government's view on live policy issues.

In addition when considering, exemptions 28, 29(1)(b) and 30(b) we have determined there is a greater public interest in allowing a private space within which officials can provide full and frank advice and views to Ministers and other officials and for the Minister to have a private space within which policy positions on drugs deaths can be explored and refined, until the Scottish Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking and discussion space is essential to enable all options to be properly considered, based on the best available advice. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, officials and stakeholders, which in turn will undermine the quality of the policy making process, which would not be in the public interest.

An exemption applies, that is not subject to the public interest test

Under section 25(1) of FOISA, we do not have to give you information which is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website(s) listed or have any difficulty retrieving this information, then please contact me again and I will send you a paper copy.

An exemption under section 36(2) of FOISA (actionable breach of confidence) applies to two documents because they were obtained from external partners and disclosure would constitute an actionable breach of confidence. This is because the information is confidential, was provided in circumstances which imposed an obligation on the Scottish Government to maintain that confidentiality. 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 under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party, ie names/contact details of individuals, and disclosing it would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998. 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.