

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies

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, i.e. the 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.

An exemption applies, subject to the public interest test

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 development of the Scottish Government's policy on Getting it right for every child (GIRFEC).

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. Their candour in doing so will be affected by their assessment of whether the discussions on GIRFEC will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

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

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) 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. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers and other officials before the

Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on refreshed GIRFEC policy statement and practice guidance will substantially inhibit the provision of such advice in the future, particularly because these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as information sharing guidance.

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 to Ministers and other officials, as part of the process of exploring and refining the Government's policy position on GIRFEC policy statement and practice guidance, 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.

Section 30(c) – substantial prejudice to the effective conduct of public affairs

An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information requested. It is essential for Ministers and officials to be able to communicate and meet, often in confidence, with external stakeholders on a range of issues, including developing a refreshed GIRFEC policy statement and practice guidance. Disclosing the content of these communications and information about these meetings, particularly without the consent of the stakeholder, is likely to undermine their trust in the Scottish Government and will substantially inhibit communications on this type of issue in the future. These stakeholders will be reluctant to participate in meetings or to provide their views fully and frankly if they believe that their views are likely to be made public, particularly while these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as information sharing guidance. This would significantly harm the Government's ability to carry out many aspects of its work, and could adversely affect its ability to gather all of the evidence it needs to make fully informed policies.

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 within which to communicate and meet with appropriate external stakeholders as part of the process of exploring and refining the Government's policy position on GIRFEC, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good policy decisions can be taken based on fully informed advice and evidence, such as that provided by the range of stakeholders. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the policy making process, which would not be in the public interest.