

Exempt material

While our aim is to provide information whenever possible, in this instance we are unable to provide most of the information you have requested because exemptions under sections 25 (information otherwise accessible), 29(1)(a) (formulation of Scottish Administration policy etc), 29(1)(b) Ministerial Communications; 30(b) (prejudice to effective conduct of public affairs: free and frank provision of advice and 38 (personal information) of FOISA apply to that information.

Exemption under Section 25

The following otherwise accessible material that is already in the public domain is covered by your request as it is referenced within the communications you have requested. This includes:

Opinion Polling published by the Electoral Commission at:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes-towards-voting-scotland-context-covid-19>

Electoral Commission – “Objectives for well-run elections in the current public health context”:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/upcoming-elections/objectives-well-run-elections-current-public-health-context>

The answer to Parliamentary Question S5W-34005: Neil Findlay, Lothian, Scottish Labour, Date Lodged: 10/12/2020: “To ask the Scottish Government whether it anticipates single-use pencils will be used at polling station at the 2021 Scottish Parliament election and, if they will be, what it anticipates will be done after polling day with all the pencils that have been used.”

<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-34005&ResultsPerPage=10>

The answer to Parliamentary Question S5W-34919: Alex Cole-Hamilton, Edinburgh Western, Scottish Liberal Democrats, Date Lodged: 04/02/2021 on "how many polling places for the 2021 Scottish election will be (a) based in schools and (b) used as COVID-19 vaccination sites, and what assessment it has carried out or plans of the safety of these locations":

[Written question and answer: S5W-34919 | Scottish Parliament Beta Website](#)

UK Government publication “May 2021 polls delivery plan” 5 February 2021:

[May 2021 polls delivery plan - GOV.UK \(www.gov.uk\)](#)

Letter from Minister of State for the Constitution and Devolution to Members of the Parliamentary Parties Panel, 22 January 2021 “Doorstep campaigning during the national lockdown in England”:

[MCD letter to members of the Parliamentary Parties Panel.pdf \(publishing.service.gov.uk\)](#)

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Exemption under Section 29(1)(a)

An exemption under section 29(1)(a) of FOISA applies to most of the information you have requested. This is because contingency planning for the 2021 Scottish Parliament election is an area where Scottish Government policy is under active formulation and development. 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 the election 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.

Exemption under Section 29(1)(b)

An exemption under section 29(1)(b) of FOISA applies to some the information requested because it relates to communications between Scottish Ministers on the subject of the Scottish Parliament election. This exemption is also 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. Again, while we recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate on the election, there is a greater public interest in allowing Ministers a private space within which policy positions can be explored and refined, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the policy making process.

Exemption under Section 30(b)(i) and 30(b)(ii)

Exemptions under sections 30(b)(i) and 30(b)(ii) of FOISA apply 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 and exchange of views for the purposes of deliberation. The exemptions recognise the need for Ministers to have a private space within which to seek advice and views from officials before reaching the settled public position which will be given in whatever final material is published. Disclosing the content of free and frank briefing material on the election will substantially inhibit such briefing in the future, particularly because discussions on the issue are still ongoing and final decisions have not been taken.

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, there is a greater public interest in allowing a private space within which officials can provide free and frank advice and views to Ministers in briefings. It is clearly in the public interest that Ministers can properly provide sound information to Parliament (to which they are accountable), and robustly defend the Government's policies and decisions. They need full and candid advice from officials to enable them to do so. Premature disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

Section 38(1)(b)

An exemption under section 38(1)(b) of FOISA applies to a small amount of some of the information requested because it is personal data of individuals included within the correspondence and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation. 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.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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