

REASONS FOR NOT PROVIDING INFORMATION

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because the following exemptions apply under the Freedom of Information (Scotland) Act (2002):

- **Section 38(1)(b) (personal information)**
- **Section 29(1)(a) formulation or development of government policy**
- **Section 30(b)(i) free and frank provision of advice**
- **Section 30(b)(ii) free and frank exchange of views**
- **Section 36(2) Breach of confidence**

The reasons why those exemptions apply are explained below.

Section 38(1)(b) (personal information)

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 (i.e. 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.

Section 29(1)(a) formulation or development of government policy

An exemption under section S.29(1)(a) applies to some of the information you have requested. This exempts information from disclosure relating to the formulation or development of government policy.

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 to understand how the Scottish Government arrived at policy on the Bill. However, this is outweighed by the public interest in ensuring Ministers can communicate with officials in formulating and developing policy.

Section 30 (b) free and frank provision of advice or exchange of views

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 before the Scottish Government reaches a settled public view.

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, as part of the process of exploring and refining the Government's policy position. 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 between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.

An exemption under section 30(b)(ii) of FOISA (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 exchange of views for the purposes of deliberation. 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 on the Scottish Government's deliberations would substantially inhibit such 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 Ministers and officials a private space within which to explore and refine the Government's position 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, so that good policy decisions can be taken.

Section 36(2) breach of confidence

An exemption under section 36(2) of FOISA (actionable breach of confidence) applies to some of the information requested because it was obtained in confidence from individuals or organisations 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, and unauthorised disclosure would be to the detriment of the individuals who provided the information. 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.