

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 plans between the Scottish Government and the Scottish Green Party on a potential cooperation agreement that would inform 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 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 decision-making, and in properly considered implementation and development of policies, plans and decisions. This means that Ministers, officials and others involved in Scottish Government / Scottish Green Party talks need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications for policies going forward. Their candour in doing so will be affected by their assessment of whether the discussions on a cooperation agreement will be disclosed in the near future, and may undermine the talks while they are still at an early stage.

Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

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, officials and others involved in Scottish Government / Scottish Green Party talks to have a private space within which to discuss and explore options before the reaching a settled public view. Disclosing the content of free and frank discussions on the deliberations on the process, content of and materials relating to cooperation agreement talks will substantially inhibit such discussions in the future, particularly because these discussions relate to an ongoing sensitive issue.

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, officials and others involved in Scottish Government / Scottish Green Party talks a private space within which to explore and refine the process and policy positions relating to a potential cooperation agreement, until the talks have concluded and a formal cooperation agreement has been agreed. This private thinking space is essential given talks are still at an early stage and

negotiations on policy content of a cooperation agreement are still to be completed. Revealing the detail of these discussions is likely to undermine the full and frank discussion of issues, which in turn will undermine the ongoing talks, which would not be in the public interest.

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.

This exemption applies because revealing the content, process and plans for a potential cooperation agreement, would be likely to impair the Government's ability to continue its positive engagement with the Scottish Green Party on a potential agreement. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption.

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 enabling the Scottish Government to continue its talks with the Scottish Green Party in a safe space while negotiations are ongoing. Releasing information about matters that are under active discussion and negotiation risks prejudicing the negotiations and would substantially impact the ability of those discussions to continue in a way which is open and constructive as work to reach a formal cooperation agreement is progressed.

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, ie the names/contact details of individuals, and disclosing it would contravene the data protection principles in the UK GDPR 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