

Appendix A

Section 30(b)(ii)

An exemption under section 30(b)(ii) 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 exchange of views. This exemption recognises the need for officials and a member of a third party to have a private space within which to provide free and frank advice to Ministers before the Scottish Government and member of a third party reaches a settled public view.

Disclosing the content of free and frank exchange of views regarding pre meeting briefing would inhibit the exchange of views in future between officials and Ministers in relation to areas of future policy making. 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 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 exchange full and frank views, as part of the process of exploring and refining the Government's and third party's decision making process. 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. 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 decision making process, which would not be in the public interest.

Section 33(1)(b)

An exemption under section 33(1)(b) of FOISA (substantial prejudice to confidentiality of commercial information) applies to some of the information you have requested.

This exemption applies because disclosure of this particular information would, or would be likely to, prejudice substantially the confidentiality of Network Rail's commercial information and thus cause substantial harm to its commercial interests. Disclosing this information would be likely to give Network Rail's suppliers an advantage in future work tendering exercises and harm its commercial business. 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 and transparent government, and to help account for the expenditure of public money. However, there is a greater public interest in protecting the commercial interests of companies which enter into Scottish Government contracts, to ensure that our suppliers are always able to obtain the best value for public money.