

Section 25(1) (information otherwise accessible)

Under section 25(1) of FOISA, we do not have to give you information which is already reasonably accessible to you. In this instance, the final document is available at <https://www.gov.scot/publications/cooperation-agreement-between-scottish-government-scottish-green-party-parliamentary-group/>. If you require a copy via email then please contact me again and I can send the information to you.

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 of the Scottish Government's cooperation agreement with the Scottish Green Party Parliamentary Group.

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 future candour in doing so will be affected by their assessment of whether the discussions on the cooperation agreement will be disclosed, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development. While the final cooperation agreement document has been published and the agreement is now in place, disclosing early iterations of document, showing how the final position was reached, could undermine the final agreement, which is intended to provide stable Government for the parliamentary term. The agreement contains a degree of ongoing cooperation and collaboration and disclosing this information could undermine the process of collaboration in future, which is not in the public interest.

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 before the Scottish Government reaches a final position.

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. Disclosure is likely to undermine the free and frank discussion between Ministers and officials, which in

turn will undermine the quality of decision making, which would not be in the public interest. In addition, the disclosure of advice provided to Ministers during the Scottish Government and Scottish Green Party talks could undermine the terms of the final agreement, which is now in place to provide stable Government for this parliamentary term.

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 and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled 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. 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. In addition, the disclosure of views expressed during the Scottish Government and Scottish Green Party talks could undermine the terms of the final agreement, which is now in place to provide stable Government for this parliamentary term.

Section 36(1) – legal proceedings

An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to some of the information requested because it is legal advice and disclosure would breach legal professional privilege.

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 as part of open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

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.