

REASONS FOR NOT PROVIDING INFORMATION

In this instance, if the information you requested did exist and was held by us, an exemption under section 29(1)(c) of FOISA would apply to that information.

This exemption would apply because the information requested would relate to advice from Law Officers. There is a long-standing convention that Government does not disclose whether the Law Officers have or have not advised on any matter. The content of any such advice would also be confidential and subject to legal professional privilege. For those reasons, if information about legal advice from the Law Officers on this subject was held by the Scottish Government, we would take the view that the public interest in withholding that information outweighed any public interest in favour of release because there is a very strong public interest in upholding the Law Officer Convention.

We also consider that to reveal whether the information you have requested exists, or is held by the Scottish Government, would be contrary to the public interest. The Law Officer Convention applies both to Scottish Ministers and those in the UK Government. It was established to promote good government and avoid undue pressure being placed on governments to seek advice from Law Officers and/or avoid conclusions being drawn regarding the relative importance of an issue and the reasons why Law Officer advice either had or had not been sought on any issue. You may be interested to note that in the case of *HM Treasury v Information Commissioner and Owen* [2009] EWHC 1811 the court found that Parliament intended that real weight should be afforded to this aspect of the Law Officer Convention. The court also found that the general considerations of good government underlining the history and nature of the convention were capable of affording weight to the interest in maintaining the exemption even in the absence of evidence of particular damage.

In this case we do not consider that the public interest in disclosing whether or not the Law Officers have advised on concerns relating to a Section 28 Inquiry, is so strong as to outweigh the general considerations in favour of the Law Officers' Convention continuing to apply. The Ministerial Code allows that information regarding whether or not Law Officers have advised on a subject or the contents of that advice may be released if the Law Officers give their prior consent to this. However, such consent would only be sought in exceptional circumstances. We do not feel that the circumstances are exceptional in this case. For these reasons, we are refusing your request under section 18(1) of FOISA.

It is also worth noting that, the Scottish Information Commissioner has previously recognised the strong public interest in withholding Law Officer advice – see for example Decisions 235/2013 and 266/2013.