

REASONS FOR NOT PROVIDING INFORMATION

Section 30(b)(i) – Free and Frank Provision of Advice

Exemptions 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 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 Lochaber Guarantee will substantially inhibit such discussions in the future, particularly because these discussions relate to a commercially sensitive and on-going matter. This exemption also recognises the free and frank exchange and advice from officials, advisors and legal colleagues in regards to decision 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 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, 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, 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.

Section 30(c) – Substantial Prejudice to 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. It is essential for Ministers and officials to be able to meet and communicate often in confidence, with external stakeholders on a range of issues. Disclosing the content of these communications/information about these meetings, particularly without the consent of the stakeholder, is likely to undermine their trust in the Scottish Government and will substantially inhibit communications on this type of issue in the future. These stakeholders will be reluctant to participate in meetings and provide their views fully and frankly if they believe that their views are likely to be made public, particularly while these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue. This would significantly harm the Government's ability to carry out many aspects of its work, and could adversely affect its ability to gather all of the evidence it needs to make fully informed policies/decisions. 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 communicate and meet with appropriate external stakeholders as part of the process of exploring and refining the Government's position, until the Government as a whole can adopt an approach that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good policy decisions can be taken based on fully informed

advice and evidence. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the policy/decision making process, which would not be in the public interest.

Section 33(1)(b) – Commercial Interest and the Economy

An exemption under section 33(1)(b) of FOISA applies to some of the information you have requested because it is likely to prejudice substantially the commercial interests of the parties. This exemption applies because release of the information would – or would be likely to – prejudice substantially the commercial interests of the commercial entities involved. Release of this information is likely to weaken the negotiating position of the business while providing commercially sensitive information to competitors. It is also likely to have an impact on the long term profitability and attractiveness of the business to future investors. The information is not in the public interest given it could have a bearing on and potentially prejudice the commercial interests of the parties involved in terms of placing them at a competitive disadvantage. It is in the public interest that the GFG Alliance can negotiate effectively in commercial contexts to ensure the continued profitability and viability of the business, given its position as a major source of employment in the West Highlands.

Section 36(1) – Legal Advice

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. The release of the content of such legal advice is likely to be appropriate only in highly compelling cases. This has been recognised by both the Scottish Information Commissioner and the courts - see, for example, the House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England* (2004) UKHL 48.

Section 38(1)(b) – Personal Data

This exemption applies to some of the information requested because it is personal data of a third party, i.e. names and contact details, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation 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.