

## REASONS FOR NOT PROVIDING INFORMATION

### An exemption applies

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 and contact details of non-senior staff or external stakeholders, and in one place details of the amount being paid to an individual. Disclosing it would contravene the data protection principles in data protection legislation. 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.

### Exemptions apply, subject to the public interest test

An exemption under **section 29(1)(a)** of FOISA (policy under development) applies to some of the information requested. The exemption recognises the needs for officials to be able to advise Ministers in confidence to consider fully the development of policy on an issue before reaching a final position on matter such as this, where the Scottish Government has not yet had a chance to consider Sir Robert Francis' recommendations would undermine the policy making process.

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 officials a private space within which to provide advice to Ministers on matters, such as compensation. Premature disclosure of initial information, particularly where the policy is still being considered given that Sir Robert's review has not yet completed and the Infected Blood Inquiry's considerations in relation to these matters are still ongoing, may cause confusion, which would not be in the public interest.

An exemption under **section 30(b)(i)** of FOISA (free and frank advice) applies to a small amount of the information requested. This exemption applies because disclosure would be likely to inhibit substantially the free and frank provision of advice for the purposes of deliberation. The exemption recognises the need for Ministers to have a private space within which to seek advice from officials before reaching a settled public position. Disclosing the content of free and frank briefing material relating to the compensation framework review will substantially inhibit such briefing in the future, particularly because, as noted above, this relates to matters which remain subject to discussion.

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 exemptions. We have found that, on balance, the public interest lies in favour of upholding the

exemptions. 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 free and frank advice to Ministers. It is clearly in the public interest that Ministers can properly respond to stakeholders on this sensitive and important issue. They need full and candid advice from officials to enable them to do so. Disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice in the future, which would not be in the public interest.