

REASONS FOR NOT PROVIDING INFORMATION

Section 30(b)(i) – Free and Frank Exchange 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 33(1)(b) – Prejudice to Commercial Interests

An exemption under section 33(1)(b) of FOISA (commercial interests) applies to some of the information requested. This has been applied to specific pieces of information related to the commercial interests of the parties to the GRA. We have applied this exemption as 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.

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, 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. Whilst Scottish Ministers do not, in general, operate in a commercial environment they are required to engage in commercial activities with commercial enterprises in respect of strategic industrial interventions in order to deliver upon

the Scottish Government's purpose; "to focus on creating a more successful country, with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth". Scottish Ministers have entered into a long-term commercial agreement with the GFG Alliance in respect of the assets at Lochaber and disclosures of the requested information may substantially impact upon the Scottish Ministers ability to negotiate guarantee terms throughout the life of this agreement whilst similarly impacting upon the GFG Alliances ability to negotiate favourable terms through its global commercial re-financing activities.