

## REASONS FOR NOT PROVIDING INFORMATION

### **Section 30 – Prejudice to effective conduct of public affairs**

This exemption 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 30(b)(ii) – Free and Frank Exchange of Views**

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 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 openness from the business on matter which should be allowed to be expressed in a private space for Ministers consideration and awareness.

### **Section 33(1)(b) – Substantial Prejudice to Commercial Interests**

This exemption 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 disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of the commercial entities involved. This exemption is subject to the 'public interest test'. Therefore, taking into 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 to ensure full transparency. However, this is outweighed by the public interest as there is a risk to the companies commercial interests.

### **Section 36(1) – Legal Advice**

This exemption applies to some the information requested because it is legal advice and disclosure would breach legal professional privilege. Legal information provided in the submission was obtained by Scottish Government legal advisors for the purposes of informing Ministers on the decision on the Lochaber Guarantee and its approval. Particularly as the Scottish taxpayer has an interest in the Lochaber smelter, as does the Scottish Government, disclosing legal advice while potential legal scenarios are developing would not be in the public interest. FOISA also recognises the need for Ministers and officials to have a private space within which to seek advice and discuss options before reaching a settled public view. Disclosing the content of such advice/discussions will substantially inhibit the free and frank provision of advice and/or exchange of views in the future, particularly if those discussions relate to sensitive issues. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption.

### **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.