

REASONS FOR NOT PROVIDING INFORMATION

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

An exemption under section 30(b)(i) of FOISA 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 officials and commercial advisers to have a private space within which to explore options or to provide more detail on a position before the Scottish Government reaches a settled public view. 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 enabling the Scottish Government to seek robust commercial advice as appropriate on measures that could determine future operations of commercial assets.

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

An exemption under section 33(1)(b) of FOISA also applies to some of the information you have requested because it relates to commercial information that may prejudice the company or the Scottish Government. 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 protecting the commercial interests of companies which enter into Scottish Government contracts, to ensure that we are always able to obtain the best value for public money.

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. 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.

Section 38(1)(b) – Personal data

An exemption under section 38(1)(b) 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.