

Annex

REASONS FOR NOT PROVIDING INFORMATION

Section 29(1)(a) – Formulation of Scottish Administration policy

An exemption under section 29 of FOISA (Formulation of Scottish Administration policy) applies to some of the information requested. This exemption applies because disclosure relates to the formulation or development of government policy.

There is no harm test attached to this exemption as information will be exempt because it relates to the formulation or development of government policy. However 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 public interest in release as part of open and transparent government, and to inform public debate. However there is a greater public interest in the government being able to consider options in private before pursuing an agreed policy path.

Section 30(b)(i) – free and frank provision of advice

An exemption 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 officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on finance, potential stakeholders and parliamentary handling will substantially inhibit the provision of such advice in the future.

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.

Section 30(c) – the effective conduct of public affairs

An exemption under section 30(c) of FOISA (the effective conduct of public affairs) applies to some of the information requested. This exemption applies because disclosure of this information would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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.

Section 33(1)(b) – commercial interests

An exemption under section 33(1)(b) of FOISA (commercial interests) applies to some of the

information requested. The reason this exemption applies is because disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of Mark Diffley Consultancy and Research Limited, DemSoc, Whitespace, 3X1 Group, ExecSpace and their venue partners. Disclosing sensitive information on pricing and contracts would be likely to give competitors of these companies an unfair advantage in any future tendering exercise. This in turn could also hinder the Scottish Government's ability to complete fair and competitive tendering exercises in future.

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, there is a greater public interest in protecting the commercial interests of companies which apply to provide services to the Scottish Government, to ensure that we are always able to obtain the best value for public money.

Section 35(1)(a) – prevention or detection of crime

An exemption under section 35(1)(a) of FOISA (prevention or detection of crime) applies to some of the information requested. The exemption can be applied where disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. In this case disclosure would have an adverse impact on the ability of the Police to carry out its law enforcement role effectively, and thereby prejudice substantially the prevention and detection of crime.

The exemption is subject to the public interest test, the decision is to uphold the exemption as the public interest in disclosing the information requested is outweighed by adverse impact on the prevention and detection of crime.

Section 36(1) – confidentiality in legal proceedings

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.

Section 38(1)(b) – personal information

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/contact details of individuals), and disclosing it would contravene the data protection principles in Schedule 1

to the Data Protection Act 1998. 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.