

Section 36(2) – actionable breach of confidence

An exemption under section 36(2) of FOISA (actionable breach of confidence) applies to some of the information requested because it was obtained from a concerned individual and disclosure would constitute an actionable breach of confidence. This is because the information is confidential, was provided in circumstances which imposed an obligation on Education Scotland to maintain that confidentiality, and unauthorised disclosure would be to the detriment of the individual who provided the information.

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.

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 and contact details of staff who work for Education Scotland as well as contact details of staff who work for Aberdeenshire Council, 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.