

REASONS FOR NOT PROVIDING INFORMATION

Section 29(1)(a) – Formulation or development of government policy

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation and development of the Scottish Government's policy.

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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

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 and other officials before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice 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 and other officials, as part of the process of exploring and refining the Government's position, until the Government as a whole can adopt a policy and decision 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 and decision making process, which would not be in the public interest.

Section 30(b)(ii) – Free and frank exchange of views for the purposes of deliberation

An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some of the information requested. 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 issues and options with external stakeholders before the Scottish Government reaches a settled public view. Disclosing the content of these discussions will substantially inhibit such discussions in the future, because these stakeholders will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public.

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 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 a policy and decision 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 and decision making process, which would not be in the public interest. There is also an important public interest in avoiding the loss of stakeholder confidence in cases where they thought they were providing comments in confidence, which would be inevitable if an individual’s contribution was released against their wishes.

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

An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information requested. It is essential for Ministers and officials to be able to communicate, often in confidence, with external stakeholders on a range of issues. Disclosing the content of these communications and 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. 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 and 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 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 a policy and decision 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 and decision making process, which would not be in the public interest.

Section 33(1)(b) – Substantial prejudice to commercial interests

An exemption under section 33(1)(b) of FOISA 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 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 undermine the integrity of the exercise and prejudice the

commercial interests of the tenderers and 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. 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. As the exemption is conditional we have applied the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the exemptions. We have found that, on balance, at this time the public interest lies in favour of upholding the exemptions. While we recognise that there is a general public interest in how public money is spent, there is a greater public interest in protecting the integrity of the tendering process and the commercial interests of tenderers, so that they are not deterred from bidding for similar contracts in the future.

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.