

## REASONS FOR NOT PROVIDING INFORMATION

### Section 28(1) - Relations within the UK

An exemption under section 28(1) of FOISA (Relations within the UK) applies to a small amount of the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially relations between the Scottish Government and UK Government. It is essential for the effective administration of the UK as a whole that there should be regular, and often private communications between the Scottish Government, UK Government and other devolved administrations. The release of this information will mean that the UK Government would be less likely to share information with the Scottish Government in future, reducing both frequency and openness of communications between the Scottish Government and other UK administrations.

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 maintaining good relations between the Scottish Government and the UK Government and in protecting the free exchange of information between the administrations to ensure that we keep each other fully and regularly informed about matters of mutual interest. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

### 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 of the Scottish Government's policy on independence.

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 on policy development for an independent Scotland 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(c) – Prejudice to the Effective Conduct of Public Affairs

An exemption under Section 30(c) (Prejudice to the Effective Conduct of Public Affairs) of FOISA applies to some of the information you have requested. The reason why this exemption applies is because releasing information regarding drafts of potential future

Scottish Government publications, which may not reflect final decisions taken, would result in inaccurate information on the Scottish Government's proposals for an independent Scotland being published, thereby undermining the Scottish Government's ability to effectively and accurately engage and communicate with the public. This in turn would be likely to impair the Government's ability to take forward its work on policy development for an independent Scotland. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption.

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 enabling the Scottish Government to effectively and accurately engage and communicate with the public on its proposals for an independent Scotland without the risk of these proposals being prejudiced by inaccurate information, which doesn't reflect final decisions taken, being released while the Scottish Government's work was still under development on a matter of significant political relevance and controversy.

### **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 and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions on communicating and engaging with stakeholders and the public in relation to independence policy development will substantially inhibit such discussions in the future, particularly because these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as Scotland's constitutional 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 Ministers and officials a private space within which to explore and refine the Government's position on communicating and engaging with stakeholders and the public in relation to independence policy development, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, 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 making process, which would not be in the public interest.

### **S.38(1)(b) (Personal Information)**

We are unable to provide some of the information you have requested because an exemption under section 38(1)(b) (Personal Information) of FOISA applies to that

information. This is because it is personal data of a third party, specifically the personal details or salaries of individuals below Senior Civil Service grade, 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.