

OFFICIAL

2. Annex A to response letter- Reasons for not providing information (As referenced in paragraph 4 and 5 above)

An exemption applies

An exemption under section s.38(1) of FOISA applies to some the information you have requested.

An exemption under section 38(1)(b) of FOISA (personal information) applies to a small amount of the information requested because it is personal data of a third party, ie names and contact details of individuals, 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.

An exemption applies, subject to the public interest test

An exemption under sections 30(b)(i) (Free and frank provision of advice) and 30(b)(ii) (free and frank exchange of views for the purpose of deliberation) of FOISA applies to some the information you have requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. 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 free and frank advice and views before the Scottish Government reaches a settled public view. Disclosing the content of such free and frank exchange of views will substantially inhibit the communication of such matters in the future, which would not be in the public interest. As an individual case is a key starting point around the consideration of advice, the balance of the assessment around this is weighted even more in favour of withholding the information.