

1. Annex A - Reasons for not providing information (as referenced in paragraph 4 and 5 above)

An exemption applies

An exemption(s) under section 38 (1)(b) of FOISA applies to some of the information you have requested. This relates to the personal information of people identified within the documents you have requested, specifically names and telephone numbers.

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.

Exemptions apply, subject to the public interest test

Exemptions under sections 28(1)(relations within the UK), 29(1)(a) (formulation or development of policy), 30(b)(i) (free and frank provision of advice) and 36(1) (confidentiality in legal proceedings) of FOISA apply to some of the information you have requested.

Some parts of these documents mention discussion with UK Government colleagues or correspondence from Scottish Government to the UK Government and have been redacted in line with section 28(1) (relations within the UK).

As these documents pertain to development of a public consultation and involve seeking views on this, some of the content within documents is redacted due to involving the formulation and development of Scottish Government policy (section 29(1)(a)) whilst other redacted parts are free and frank advice. These sections might, for example, pertain to possible areas to be included within the public consultation. The nature of developing any consultation paper is likely to involve both of these exemptions.

Other content within the documents refers to legal advice or is informed directly by legal advice (section 36(1)).

These exemptions are 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 exemptions.

We recognise that there is some public interest in release of information because of the need for open and transparent government and the contentious nature, and interest in, the policy topic concerned. However, this is outweighed by the public interest in allowing a private space for policy to be discussed and formulated at an early stage.