

Annex A

An exemption under section 38(1)(a) of FOISA (personal information) applies to some of the information requested because it is personal information of which you are the data subject, and so it is subject to the General Data Protection Regulation and 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. I understand that you have also made a subject access request in relation to this 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, for example names/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 under section s 30(b)(i) and (ii) of FOISA applies to some of the information you have requested. This relates to information which contains advice and the sharing of information in order to support deliberation.

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 some public interest in release because there would be interest in the advice provided to Ministers on this matter. However, this is outweighed by the public interest in enabling officials to provide uninhibited advice to Ministers on matters which are sensitive and require careful consideration.

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 before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on the thematic inspection of the recording and monitoring of bullying will substantially inhibit the provision of such advice in the future, particularly because these discussions relate to a sensitive or controversial issue such including bullying in schools and its impact.

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, as part of the process of

exploring and refining the Government's policy position and response to the thematic inspection on recording and monitoring of bullying in schools, 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 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 decision making process, which would not be in the public interest.

An exemption under section 30(b)(i) and (ii) of FOISA (free and frank provision of advice) and (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 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 before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on the thematic inspection of the recording and monitoring of bullying will substantially inhibit the provision of such advice in the future, particularly because these discussions relate to a sensitive or controversial issue such including bullying in schools and its impact.

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, as part of the process of exploring and refining the Government's policy position and response to the thematic inspection on recording and monitoring of bullying in schools, 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 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 decision making process, which would not be in the public interest.

An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to some of the information requested because it is legal advice and disclosure would breach legal professional privilege.

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 some public interest in release as part of open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and

officials are able to receive legal advice in confidence, like any other public or private organisation.