

## ANNEX A

### **Section 38(1)(b) - personal 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 (i.e. names/contact details of individuals), and disclosing it would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998. 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.

### **Section 30(b)(ii) - inhibit substantially the free and frank provision 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. The exemption recognises the need for officials to have a private space within which to seek advice and views from others before reaching a settled public position. Disclosing the content of free and frank exchanges regarding draft lines in response to media queries and parliamentary questions will substantially inhibit such briefing 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 free and frank advice and views to other officials in briefing. It is clearly in the public interest that the Scottish Government can properly respond to the media and MSPs on matters of such importance as long COVID. This needs full and candid advice from and discussion between officials to enable this. Disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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