

FOI - 202300360427

**ANNEX A**

Exemptions not subject to the public interest test

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 and contact details of non-senior staff and disclosing it would contravene the data protection principles in data protection legislation. 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 subject to the public interest test

Some information is exempt under section 29(1)(a) as it relates to the development of Scottish Government policy on compensation for infected blood victims. The exemption recognises the need for officials and Ministers to be able to consider fully a range of information on infected blood compensation, before reaching a settled public position.

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 officials and Ministers a private space to consider the information and evidence available on matters of such importance before reaching a settled public position.

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) also 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 for the purposes of deliberation. The exemption recognises the need for Ministers to have a private space within which to receive advice from officials before reaching a settled position. Disclosing the content of free and frank briefing material on compensation will substantially inhibit such briefing in the future, particularly because this relates to matters which remain subject to ongoing discussion following the Inquiry's second interim report.

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 officials a private space within which to communicate with Ministers on sensitive issues such as this. This private space is essential so that decisions can be taken based on informed advice. Premature disclosure is likely to undermine the full and frank discussion, which in turn will undermine the quality of the policy making process, which would not be in the public interest.