

ANNEX A

1. Email from Police Scotland to COPFS, 15 November 2022
2. COPFS media coverage documents, 30 November 2022

ANNEX B

An exemption under section 30(c) of FOISA applies to the full redacted sentence in the email dated 15 November at 2022 06:57 because the matter under discussion is of significant sensitivity, and disclosure of the redacted sentence would be likely to significantly prejudice future proceedings.

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. While we recognise there is some interest in relation to the Luke Mitchell conviction, we consider that disclosure of the redacted information in this document would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs in relation to the criminal justice system and any future proceedings.

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An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to some of the information requested because some of it is legal advice and disclosure would breach legal professional privilege; other information is also subject to the exemption under section 36(1) because litigation privilege applies to the correspondence between SGLD and Mr Mitchell's lawyers.

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. The release of the content of information is likely to be appropriate only in highly compelling cases. This has been recognised by both the Scottish Information Commissioner and the courts - see, for example, the House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England* (2004) UKHL 48. The public interest also requires the maintenance of confidential communications between solicitors when litigation is either pending or being considered, including "without prejudice" correspondence; the release of that

information would be likely to prejudice both parties' ability to handle any litigation which subsequently arises.

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An exemption under section 38(1)(b) applies in relation to personal data, which has been redacted from the documents released.