

Annex A

Section 29(1)(a) – formulation or development of government policy

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation and development of the Scottish Government's policy on development of a prospectus for an independent Scotland and work on an independence referendum Bill.

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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development

Section 29(1)(b) – Ministerial communications

An exemption under section 29(1)(b) of FOISA (Ministerial communications) applies to some of the information requested because it relates to communications between Scottish Ministers. 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 Ministers a private space within which issues can be explored and refined, until the Government as a whole can reach a decision that is sound and likely to be effective. This private thinking space also allows for all options to be properly considered, so that good decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the decision making process

Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

While our aim is to provide information whenever possible, in this instance we are unable to provide the information under this part of your request because an exemption under section 30(b)(ii) (the free and frank exchange of views for the

purposes of deliberation) applies to some of it. The reasons for applying this exemption are set out below.

This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation. The exemptions recognise the need for Ministers to have a private space within which to seek advice and views from officials before reaching a settled public position. Disclosing the content of free and frank advice on the development of a prospectus for an independent Scotland will substantially inhibit the provision of such advice in the future, particularly because these discussions relate to a sensitive issue.

Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) recognises the need to allow Ministers some private space for discussion. 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 maintaining the process of achieving collective responsibility within a private space within which policy positions can be explored and refined by Ministers in order that the Government, as a whole, can reach a final decision. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the policy and decision-making process.