

### An exemption applies

An exemption under section s.38(1)(b) of FOISA applies to some of the information you have requested. This exemption applies as it related to personal data of a third party (i.e. names, job titles, email addresses, telephone numbers) 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.

### Exemptions subject to the public interest test

An exemption under section 30(b)(i) (Free and frank provision of advice) of FOISA applies to some the information you have requested. The exemption has been applied because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice.

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 before the Scottish Government reaches a settled public view. Disclosing the content of such free and frank advice will substantially inhibit the communication of such matters in the future, which would not be in the public interest.

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. This exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions will substantially inhibit such discussions in the future, particularly because these discussions relate to a sensitive or controversial issue.

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 and officials a private space within which to explore and refine the Government's position.

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 development of the Scottish Government's policy on incorporating the United Convention on the Rights of the Child [UNCRC].

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 the UNCRC 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.

An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information requested. Disclosing this information would substantially prejudice our ability to prepare legislation because of the need to consider timings before being publicly announced. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption.

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. However, there is a greater public interest in protecting the process of preparing legislation and ensuring that the Scottish Government is able to conduct this aspect of its business effectively.