

## **Annex**

### **REASONS FOR NOT PROVIDING INFORMATION**

#### **An exemption applies**

An exemption under section 38(1)(b) (personal data relating to a third party) of FOISA applies to some of the information you have requested. 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.

#### **An exemption applies, subject to the public interest test**

- An exemption under s.29 (1) (a) (formulation/development of government policy) of FOISA applies to some of the information you have requested. 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.
- An exemption under s. 30(b)(i) - substantial inhibition to free and frank provision of advice) of FOISA applies to some of the information you have requested. 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.
- An exemption under s. 30 (b) (ii) - inhibit substantially the free and frank exchange of views.
- Under exemption s. 25 - exempts information from disclosure where the requester can reasonably obtain the information without making a request for it. 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.

The request included any analysis, correspondence or briefing notes provided to any Scottish Ministers on the recommendations.

While our aim is to provide information whenever possible, in this instance we are unable to provide the information requested because exemptions under section 29(1)(a) (formulation/development of government policy) and sections 30(b)(i) and 30(b)(ii) (free and frank provision of advice and free and frank exchange of views) of the Freedom of Information (Scotland) Act 2002 apply to that information.

These exemptions apply 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 the settled public position which will be given in whatever final publicly available answer Ministers then give.

Releasing this information would inhibit the formulation and development of Government policy, as it would deny Ministers and officials the opportunity to develop and share analysis in order to reach a consensus. Disclosing the content of free and frank briefing material provided to Ministers, including for still live Parliamentary engagement, would substantially inhibit such briefing in the future, particularly because the provision of advice and discussions on issues are still ongoing and final decisions may have not been taken. And these discussions relate to often evolving and sensitive issues such as those raised at First Ministers Questions.

These exemptions are 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 exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemption for the advice.

We recognise that there is a public interest in disclosing information as part of an 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 analyse and develop policy positions and provide free and frank advice and views to Ministers in briefing notes. It is clearly in the public interest that Ministers can properly answer MSP's questions and provide sound information to Parliament about the Government's policies and decisions. They need full and candid advice from officials to enable them to do so. Premature 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.