

FOI ref: 202300338428

ANNEX

Exemption under FOISA section 28(1) (release of this information would be likely to prejudice substantially relations between any administration in the UK) applies to some of the information requested. This exemption recognises the need to maintain good relations with all UK government administrations for the benefit of the wider UK public interest.

This exemption applies because disclosure of communications and discussions in relation to, or with, other UK government administrations, without their consent, would substantially reduce other UK government administrations confidence in the Scottish Government and Scottish Government Ministers.

This exemption is subject to the public interest and prejudice test. Taking account of all the circumstances of this case, we have considered if the wider UK public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the wider UK public interest lies in favour of upholding the exemptions. 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 Ministers and officials from all UK government administrations can communicate and where all UK government administration Ministers and officials can provide free and frank advice and views. Disclosure of this type of information would be detrimental to the wider UK public interest and would substantially prejudice the ability of both Scottish Government and other UK government administrations to engage and conduct meaningful public affairs.

An exemption under section 29(1)(d) of FOISA applies to some of the information you have requested. Section 29(1)(d) relates to the operation of any Ministerial private office.

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 information within these documents is administrative only and is not of benefit to the public as it would not further inform the background of a Ministerial decision.

Exemptions under section 30 b (i) and (ii) of FOISA (free and frank exchange of advice and views) apply to some of the information requested. 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 exemption recognises the need for Ministers to have a private space within

which to seek advice from officials prior to meetings. Disclosing the content of free and frank information will substantially inhibit such information in the future.

This exemption is subject to the public interest and prejudice test. 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 exemptions. 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 and views to Ministers. 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 as it would substantially prejudice the ability of Ministers to engage with Scottish Government officials.

Section 38(1)(b) – Personal Data

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, 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.