

Exemptions to Disclosure

Exemptions used under Freedom of Information (Scotland) 2002 (FoISA) to withhold information.

Personal Information - Section 38 (1) (b) FoISA 2002.

Whilst our aim is to provide all the information you have requested, some exemptions apply to that information you have asked for. In this instance, an exemption under section 38(1)(b) of FOISA (personal information) applies because it is personal data, 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.

Prejudice to effective conduct of public affairs - Sections 30 (b) (i) and 30 (b) (ii)

A further exemption applies to the information you have requested due to the nature of that information. In this instance, sections 30 (b) (i) "provision of free and frank advice" and 30 (b) (ii) "substantial inhibition of free and frank exchange of views" for the purposes of deliberation applies to that information because these exemptions recognise the need for Ministers and officials to have a private space within which to seek advice and discuss options before reaching a settled public view. Disclosing the content of such advice/discussions will substantially inhibit the free and frank provision of advice and/or exchange of views in the future, particularly if those discussions relate to sensitive or controversial issues.

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 because disclosure of the information requested would enhance public scrutiny of our decision-making or policymaking processes, and therefore our transparency and accountability.

However, this is outweighed to apply the exemption as it is essential for Scottish Government officials to be able to brief ministers on a range of issues it is responsible for. Disclosing information about such meetings/briefings, is likely to undermine their trust in Government in future, or to provide their views fully and frankly. This would significantly harm the Scottish Government's ability to carry out many aspects of its work, and could adversely affect its ability to gather all of the evidence needed to make fully informed policies/decisions.

