

## REASONS FOR NOT PROVIDING INFORMATION

### An exemption applies

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have some of the information you have requested.

The Scottish Government does not have the information you have asked for because the searches undertaken by The Scottish Government did not identify any documents or records within the scope of the second element of the request.

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.

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

An exemption under sections s.25 (information otherwise accessible) and s.27(1) (information intended for future publication) of FOISA applies to some of the information you have requested because it relates to earlier draft material of information since made publicly available, or the final versions of these. This public information can be found here: <https://www.gov.scot/publications/scottish-resource-spending-review/>

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 the development of high quality and comprehensive publications. This means that Ministers and officials need to be able to internally share and consider early draft of material and to scrutinise this comprehensively to fully understand the possible implications of publishing. Their candour in doing so will be affected by their assessment of whether these discussions will be disclosed in the near future, when it may undermine or constrain the government's view on policies while they are still under discussion and development. Further, releasing early versions of publications, media responses and

news releases could contain factually inaccurate information and therefore be misleading to the public.

An exemption under section 29(1)(a) of FOISA applies to some of the information you have requested because it relates to the development of Scottish Government policy for inclusion in the Resource Spending Review (2022) and / or the Review of the Capital Spending Review (2022).

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 these discussions will be disclosed in the near future, when it may undermine or constrain the government's view on policies while they are still under discussion and development.

An exemption under section 29(1)(b) of FOISA applies to some of the information you have requested because it relates to the Ministerial communications regarding to the Resource Spending Review (2022) and / or the Review of the Capital Spending Review (2022).

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 it supports the principles of the Scottish Government being open and transparent, and also informs public debate. However, there is greater public interest in allowing Ministers and the Lord Advocate 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 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 making process.

An exemption under sections 30(b)(i) (Free and frank provision of advice) and 30(b)(ii) (free and frank exchange of views for the purpose of deliberation) of FOISA applies to some the information you have requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and / or exchange of views.

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 and views to Ministers in briefing during the development of policy and / or publications. It recognises the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on policy proposals and development options will substantially inhibit the provision of such advice in the future, which would not be in the public interest. Similarly, the free and frank exchange of views between officials is critical in ensuring the programme can be progressed collaboratively and with support from internal stakeholders. Disclosing the content of such free and frank exchange of views will substantially inhibit the communication of such matters in the future, which would not be in the public interest.

An exemption under section 30(c) (effective conduct of public affairs) of FOISA applies to some the information you have requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the effective conduct of public affairs.

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 arrange and progress internal processes during the development of the Resource Spending Review. It recognises the need for officials to have a private space within which to operate and develop information and process before the Scottish Government reaches a settled public view. Disclosing the detail of internal processes will substantially inhibit the operation of programmes in the future, which would not be in the public interest.