

ANNEX C –

Reasons for not providing certain information

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because an exemption under sections 30(c) (effective conduct of public affairs) and 38(1)(b) FOISA (personal information) apply.

*Section 30(c) (effective conduct of public affairs)*

An exemption under section 30(c) (prejudice to effective conduct of public affairs) of FOISA applies to some of the information you have requested. This exemption applies because disclosure of some of the information which falls within the scope of your request relates to potential litigation that the Government may become involved in. Disclosing information about these matters is likely to cause substantial prejudice to the effective conduct of public affairs as it may affect the government's ability to conduct sensitive discussions with other parties in contemplation of litigation and may impact on those parties.

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 enabling the Scottish Government to determine how and from whom it receives legal advice, without facing external pressure or concerns that particular conclusions may be drawn from the fact that any particular lawyer has or has not provided legal advice on a particular matter. Releasing information about the source of legal advice would also be a breach of the long-standing Law Officer Convention (reflected in the [Scottish Ministerial Code](#)) which prevents the Scottish Government from revealing whether Law Officers either have or have not provided legal advice on any matter, other than in exceptional circumstances.

*Section 38(1)(b) (personal information)*

An exemption under section s.38(1)(b) (personal information) of FOISA applies to some of the information you have requested. This is because some of the information you have requested contains personal data of third parties and release of this information would contravene data protection principles.

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.