

## EXEMPTIONS APPLIED

### **Section 38(1)(b) – applicant has asked for personal data of a third party**

*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, ie names and contact details of individuals, 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.*

### **Section 36(2) – actionable breach of confidence**

*An exemption under section 36(2) of FOISA (actionable breach of confidence) applies to some of the information requested because it was obtained from the Scottish Refugee Council and disclosure would constitute an actionable breach of confidence. This is because the information is confidential, was provided in circumstances which imposed an obligation on the Scottish Government to maintain that confidentiality, and unauthorised disclosure would be to the detriment of the organisation who provided the information. 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.*

### **Section 30(b)(i) – free and frank provision of advice**

*An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers/other officials before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on our temporary accommodation estate will substantially inhibit the provision of such advice in the future, particularly because these discussions relate to a sensitive or controversial issue.*

*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 full and frank advice to Ministers/other officials, as part of the process of exploring and refining the Government’s policy position on how we support and integrate displaced people from Ukraine until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure*

*is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.*

**Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation**

*An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for officials to have a private space within which to discuss issues and options with external stakeholders before the Scottish Government reaches a settled public view. Disclosing the content of these discussions with Corporate Travel Management (CTM) on the procurement of the MS Victoria will substantially inhibit such discussions in the future, because these stakeholders will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public, particularly while the contract is still running and we maintain a professional working relationship with them.*

*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 Ministers and officials a private space within which to communicate with appropriate external stakeholders as part of the process of exploring and refining the Government’s welcome accommodation and policy for displaced persons from Ukraine. This private space is essential to enable all options to be properly considered, so that good policy decisions can be taken based on fully informed advice and evidence, such as that provided by CTM. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the policy making process, which would not be in the public interest.*

**Section 30(c) – substantial prejudice to the effective conduct of public affairs**

*An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information requested. It is essential for Ministers/officials to be able to communicate, often in confidence, with external stakeholders on a range of issues, including procurement of welcome accommodation, including the MS Victoria. Disclosing the content of these communications, particularly without the consent of the stakeholder, is likely to undermine their trust in the Scottish Government and will substantially inhibit communications on this type of issue in the future. These stakeholders will be reluctant to provide their views fully and frankly if they believe that their views are likely to be made public, particularly while the contract is still running and we maintain a professional working relationship with them. This would significantly harm*

*the Government's ability to carry out many aspects of its work, and could adversely affect its ability to gather all of the evidence it needs to make fully informed policy.*

*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 Ministers and officials a private space within which to communicate with appropriate external stakeholders as part of the process of exploring and refining the Government's policy position on our welcome accommodation offer for displaced persons from Ukraine until the Government as a whole can adopt a policy that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good policy decisions can be taken based on fully informed advice and evidence, such as that provided by CTM. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the policy making process, which would not be in the public interest.*

#### **Section 33(1)(b) – commercial interests**

*An exemption under section 33(1)(b) of FOISA (commercial interests) applies to some of the information requested. This exemption applies because disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of CTM. Disclosing this information would be likely to give CTM's competitors an advantage in future similar tendering exercises, which would substantially prejudice their ability to submit competitive tenders and so could significantly harm their commercial business.*

*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 and transparent government, and to help account for the expenditure of public money. However, there is a greater public interest in protecting the commercial interests of companies which enter into Scottish Government contracts, to ensure that we are always able to obtain the best value for public money.*

#### **Section 29(1)(a) – formulation or development of government policy**

*An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the development of the Scottish Government's policy on re-settlement and integration of displaced persons from Ukraine.*

*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. .*

### **Section 29(1)(b) – Ministerial communications**

*An exemption under section 29(1)(b) of FOISA (Ministerial communications) applies to some of the information requested because it relates to communications between Scottish Ministers.*

*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 Ministers a private space within which policy options can be explored and refined, until the Government as a whole can adopt a policy 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.*