

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies

An exemption under section 25 (information otherwise accessible) of FOISA applies to some of the information you have requested. This exemption applies as the information can reasonably be obtained without making a request for it under FOISA regulations. See link: [State aid: Commission adopts Temporary Crisis Framework \(europa.eu\)](#)

An exemption under section 38(1)(b) (personal data of a third party) of FOISA applies to some of the information you have requested. This exemption applies to the names of third parties referenced throughout the documents within scope of the request. The Scottish Government has a policy of not disclosing the names of officials who are not Senior Civil Servants. The names of non-senior civil servants have been redacted to protect their privacy. The contact information of all parties is also redacted throughout. 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 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 any person. "Person" includes a public authority, company and partnership.

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. However, there is a greater public interest in protecting there is a greater public interest in protecting the integrity of the procurement process and the commercial interests of tenderers.

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) and 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 Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions will substantially inhibit such discussions in the future.

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 explore and refine the Government's position, until the Government as a whole can adopt a policy/decision that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, so that good 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/decision making process, which would not be in the public interest.

An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to some of the information requested because it is legal advice and disclosure would breach legal professional privilege.

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 as part of open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation. The release of the content of such legal advice is likely to be appropriate only in highly compelling cases.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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