

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

Exemptions under sections 30(b)(i) and 30(b)(ii) of FOISA (free and frank advice and exchange of views) apply to some of the information requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation.

The exemptions recognise the need for HM Inspectors to have a private space within which to seek advice and views before reaching the settled public position in finalising the independent evaluation of how schools are recording and monitoring incidents of bullying.

Disclosing the content of free and frank briefing material on the independent evaluation of how schools are recording and monitoring incidents of bullying will substantially inhibit such briefing in the future, particularly because there is an expectation of confidentiality in information that is shared by schools with HM Inspectors. Schools may not be as open if this confidentiality cannot be maintained.

These exemptions are 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 exemptions.

We have found that, on balance, the public interest test lies in favour of upholding the exemptions. 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 briefings and reports.

It is clearly in the public interest that HM Inspectors can provide advice to Ministers so that they can properly answer Parliamentary questions, and provide sound information to Parliament to which they are accountable. They need full and candid advice from officials to enable them to do so. Premature disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

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

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, i.e. names and contact details of staff who work for Education Scotland, 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.