

ANNEX

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 stakeholders 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 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 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 position, until the Government as a whole can adopt a decision that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence. 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 decision making process, which would not be in the public interest. There is also an important public interest in avoiding the loss of stakeholder confidence in cases where they thought they were providing comments in confidence, which would be inevitable if an individual's contribution was released against their wishes.

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 those involved. Disclosing this information would be likely to give competitors an advantage in future similar activities.

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.