

## ANNEX A

### REASONS FOR NOT PROVIDING INFORMATION

#### An exemption applies

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 nonsenior staff and disclosing it would contravene the data protection principles in data protection legislation. 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.

#### Exemptions apply, subject to the public interest test

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 Ministers to have a private space within which to seek advice and views from officials before reaching a settled public position. Disclosing the content of free and frank briefing material relating to vaccination of children under the age of 16 against COVID-19 will substantially inhibit such briefing in the future.

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 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 to and exchange views with Ministers. It is clearly in the public interest that Ministers can properly respond to stakeholders on this sensitive issue. They need full and candid advice from officials to enable them to do so. 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.

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 the Scottish Government to be able to communicate, often in confidence, with external stakeholders, such as local Health Boards, on issues such as vaccination of children under the age of 16 against COVID-19. Disclosing the content of these communications 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 share their views fully and frankly if they believe that their views are likely to be made public, particularly where these discussions relate to a sensitive issue, such as vaccination of children under the age of 16 against COVID-19. 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 information it needs to make fully informed decisions.

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 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 and appropriate options on issues relating to vaccination of children under the age of 16 against COVID-19. This private space is essential so that decisions can be taken based on informed advice. 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.

Finally, 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.