

Annex to the response

An exemption under section 28(1) of FOISA (relations within the UK) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially relations between the Scottish Government and the UK Government. This is because it is important that officials and ministers in the UK Government can have free and frank policy discussions with their Scottish Government counterparts. It is essential for the effective administration of the UK as a whole that there should be regular, and often private, communications between the Scottish Government, the UK Government and the other devolved administrations. Disclosure of this information will mean that the UK Government is likely to be more reluctant to communicate as frequently and openly with the Scottish Government in 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 maintaining close working relationships between the Scottish Government and the UK Government and in protecting the free exchange of information between the administrations to ensure that we keep each other fully and regularly informed about matters of mutual interest. There is no public interest in disclosing information when that will damage relationships and disrupt future communications as that may impact on the effectiveness of future policy development and implementation work.

An exemption under section 38(1)(b) of FOISA (personal information) applies to a small amount of the information requested because it is personal data of a third party, e.g. 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.