

ANNEX A

An exception under regulation 11(2) of the EIRs (personal information) applies to some of the information requested because it is personal data of a third party 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 exception 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 exception.

Regulation 10(4)(e) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) allows a Scottish public authority to withhold internal communications. The exception covers all internal communications, regardless of their content or the level of harm that disclosure would be likely to cause. However, internal communications cannot be withheld under regulation 10(4)(e) unless there is a greater public interest in keeping the information secret than in disclosing it (regulation 10(1)(b)). This means that, even if the exception applies, the information should still be disclosed unless the public interest in withholding the information outweighs the public interest in making it available. This exception can be relied on regardless of the age of the information.

This exception has been applied in a limited number of cases where there are internal communications relating to documents still to be published and the public interest is not best served by releasing the information. In all cases, the need to ensure transparency has been considered and it has only been applied where no benefit to the public interest can be gained from disclosure of internal communications.

Regulation 10(4)(d) relates to Material in the course of completion, unfinished documents, or incomplete data. This exception suggests that a document will have more work done on it within some reasonable time-frame.

The Regulation 10(4)(d) exception 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 exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open and transparent government. However, it has been concluded that this is outweighed by arguments in favour of not supplying draft versions of incomplete or unfinished information when the final version is being disclosed. This ensures that incorrect or incomplete information is not put into the public domain when a final version is available. In such cases, there is no public interest in potentially supplying incorrect or incomplete information. Regulation 10(4)(d) has been applied in a restrictive manner where a draft of a document has been withheld and the final version released.

Regulation 10(5)(f) allows authorities to withhold information where disclosure would, or would be likely to, prejudice substantially the interests of the person who supplied the information. Because the harm test also applies to this exception, it only applies where disclosure of the information would, or would be likely to, substantially prejudice the interests of the person who provided the information.

This exception is subject to the public interest test in regulation 10(1). This means that, even if the exception applies, the information should still be disclosed unless the public interest in withholding the information outweighs the public interest in making it available.

In one meeting note we have applied this exception to parts of the meeting note with a third party where we have determined that there is no public interest in disclosing the information and prejudicing the interests of the person who supplied it.

In addition, Regulation 10(5)(e) applies to confidentiality of commercial or industrial information in relation to one meeting note. This allows authorities to withhold information where disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.

This information was shared in a closed business forum and included discussion of commercially sensitive information. By upholding this exception, it protects a duty of confidence and legitimate economic interests in line with Regulation 10(5)(d). On balance, it was found that the public interest does not lie in favour of disclosing this information, which is commercial in nature and was provided in confidence.