

**REASONS FOR NOT PROVIDING INFORMATION****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 Ministers to have a private space within which to seek advice and views from officials before reaching the settled public position which will be given in whatever final lines to take are used. Disclosing the content of free and frank briefing material on the Commercial Advisors Framework will substantially inhibit such briefing in the future, particularly because there are commercial interests that would be substantially prejudiced, even having regard for the public interest test.

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 and views to Ministers in on the commercial decisions detailed in the Framework. It is clearly in the public interest that Ministers can properly defend the Government’s policies and decisions. 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 36(1) – Legal Advice**

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.

**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. Disclosing this information 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.