

# 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. personal 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.

### **An exemption applies, subject to the public interest test**

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 Ministers and officials to be able to communicate, often in confidence, with external stakeholders. Naturally, there is a need for us to be mindful of the sensitivities around communications relating to the late Queen's funeral.

Disclosing the content of these communications, particularly without the consent of the stakeholder, is likely to undermine their trust in the Scottish Government and would be likely to substantially inhibit communications on other issues in the future. These stakeholders will be reluctant to communicate fully and frankly with us if they believe that their views and comments are likely to be made public. This would significantly harm the Government's ability to carry out many aspects of its work in relation to protocol and other issues.

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 in order to effectively deliver its business.

An exemption under section 41(a) of FOISA (communications with His Majesty, etc.) applies to some of the information requested because it relates to communications with the Royal Household. 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. However, this is outweighed by

the greater public interest in maintaining the long-standing constitutional Convention that correspondence between The Sovereign and the government is confidential in nature. This Convention is an adjunct of the right of The Sovereign to be consulted by his Government, and to advise, encourage and to warn as the circumstances require. The rights of The Sovereign could not be exercised effectively without this expectation of confidentiality and, if the content of these consultations became known, it may serve to undermine the appearance of the political neutrality of The Sovereign.