

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies. Section 38(1)(b) – applicant has asked for personal data of a third party.

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 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. Section 29(1)(a) – formulation or development of government policy.

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation of the Scottish Government’s policy on NHS recovery. 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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on the NHS Recovery Plan will be disclosed in the near future, when it may undermine or constrain the Government’s view on that policy while it is still under discussion and development.

Section 30(b)(i) – free and frank provision of advice

Exemptions under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption recognises the need for Ministers to have a private space within which to seek advice and views from officials before reaching the settled public position. Disclosing the content of free and frank briefing material provided by boards relating to capital spending, construction and workforce will substantially inhibit such briefing in the future, particularly because discussions on the issue relate to a commercially sensitive and ongoing matter. 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 a private space within which officials can provide full and frank advice to Ministers as part of the process of exploring and refining the Government's policy, until the Government as a whole can adopt a policy decision that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy decision making process, which would not be in the public interest.