

ANNEX A

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies

An exemption under section 38(1)(b) (personal information) of FOISA applies to some of the information you have requested. This exemption relates to personal information, specifically the names of Scottish Government staff below Senior Civil Service grade and names of external stakeholders. 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.

An exemption applies, subject to the public interest test

An exemption under section 30(c) (effective conduct of public affairs) of FOISA applies to some of the information you have requested. Information is exempt under section 30(c) of FOISA if disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption applies to commercially sensitive information contained in a consultation response, BRIA response and some email correspondence regarding the BRIA survey from drinks manufacturers. Releasing this information may adversely affect the inclination of third parties to participate in future consultations and BRIA exercises. Publication may also adversely affect the overall relationship between the Scottish Government and respondents, thus causing substantial prejudice to the conduct of public affairs.

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 because of the Scottish Government's decision not to proceed with mandatory measures to restrict energy drink sales to children and young people. In light of this decision the public may wish to view all correspondence relating to the consultation and BRIA in its entirety. However, this is outweighed by the public interest in the Scottish Government receiving future consultation and BRIA responses from industry to help inform policy making.