

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

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 the emergency services. 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 any funding decisions for blue light services 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(c) of FOISA (substantial prejudice to the effective conduct of public affairs).

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 to be able to meet, often in confidence, with external stakeholders on a range of issues, including business and commercially sensitive concerns. Disclosing the information about these meetings, particularly without the consent of the stakeholder, is likely to undermine their trust in the Scottish Government and will substantially inhibit communications on this type of issue in the future. These stakeholders will be reluctant to participate in meetings or provide their views fully and frankly if they believe that their views are likely to be made public, particularly while these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as commercial and business operations. This would significantly harm the Government's ability to carry out many aspects of its work, and could adversely affect its ability to gather all of the evidence it needs to make fully informed decisions. 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 engage with appropriate external stakeholders as part of the process of exploring and refining the Government's position, until the Government as a whole can adopt a decision that is sound and likely to be effective. This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the decision making process, which would not be in the public interest.

Section 30(b)(i)&(ii) - inhibit substantially the free and frank provision of advice

Exemptions under section 30(b)(i) and 30(b)(ii) of FOISA (free and frank provision of advice and free and frank exchange of views for the purposes of deliberation) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions on blue light collaboration will substantially inhibit such discussions in the future, particularly because these discussions are still ongoing. 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 explore and refine the Government's policies on blue light collaboration, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, so that good health funding 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 making process, which would not be in the public interest.

33(1)(b) of FOISA (commercial interests).

An exemption under section 33(1)(b) of FOISA (commercial interests) applies to some of the information requested. This exemption applies because disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of attendees. Disclosing this information would be likely to give the attendees competitors an advantage in future tendering exercises, which would substantially prejudice their ability to submit competitive tenders and so could significantly harm their commercial business. 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 and transparent government. However, there is a greater public interest in protecting the commercial interests of companies and ensuring fair competition in such tendering processes in order to avoid putting winning bidders at a disadvantage against its competitors. Companies would be reluctant to supply such information to the Scottish Government if the information were to be released into the public domain with the result of causing real, significant and substantial prejudice to their ability to compete against other companies, about whom similar information is not in the public domain.

Section 38(1)(b) – An exemption under section 38(1)(b) of FOISA (personal information) applies to a small amount of the information requested because it is personal data of a third party, i.e. names and contact details for a range of people 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.