

Annex D

Section 30(c) – Prejudice to the Effective Conduct of Public Affairs

An exemption under Section 30(c) (Prejudice to the Effective Conduct of Public Affairs) of FOISA applies to some of the information you have requested. The reason why this exemption applies is because releasing drafts of potential future Scottish Government publications, which may not reflect final decisions taken, would result in inaccurate information on the Scottish Government's proposals for an independent Scotland being published, thereby undermining the Scottish Government's ability to effectively and accurately engage and communicate with the public. This in turn would be likely to impair the Government's ability to take forward its work on policy development for an independent Scotland. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption. 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 enabling the Scottish Government to effectively and accurately engage and communicate with the public on its proposals for an independent Scotland without the risk of these proposals being prejudiced by inaccurate information, which doesn't reflect final decisions taken.

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

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) 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.

This exemption recognises the need to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice will substantially inhibit the provision of such advice in the future.

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 Scottish Government staff can provide full and frank advice to Ministers 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, 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 making process, which would not be in the public interest.

Section 30(b)(ii) – Free and Frank Exchange of Views for the Purposes of Deliberation

An exemption under section 30(b)(ii) of FOISA (Free and Frank Exchange of Views) applies to some of the amount of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for a private space to discuss and explore options with stakeholders. Disclosing the content of free and frank discussions will substantially inhibit such discussions in the future and may deter stakeholders from entering into discussions with the Scottish Government if they believe their comments will be published.

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 to engage with stakeholders and external experts. This private thinking space is essential to enable all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues, which in turn will undermine the quality of the policy making process, which would not be in the public interest.

Section 36(1) - Confidentiality in legal proceedings (covers 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.