

## Reasons for not providing information

### An exemption applies

An exemption(s) under section 38 (1)(b) of FOISA applies to some of the information you have requested. This relates to the personal information of people identified within the documents you have requested, specifically names and telephone numbers.

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.

### Exemptions apply, subject to the public interest test

Exemptions under section(s) 30(b)(i) (the free and frank provision of advice), s.30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) and s.36(1) (confidentiality) apply to some of the information you have requested.

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information under this part of your request because an exemption under section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) applies to it. The reasons for applying this exemption are set out below.

Paragraph 2.1 of the Scottish Ministerial Code provides that "the privacy of opinions expressed and advice offered within the Government should be maintained" at all times. Cabinet papers/agendas/minutes are essential elements which support and assist collective discussion in the private space which Ministers need to reach agreed positions.

The weekly meeting of the Scottish Cabinet is the highest decision-making forum within the Scottish Government, and it follows that all information considered by Cabinet must be handled with great care.

Properly functioning Cabinet processes are generally recognised to be of vital public interest: Cabinet government is based on the principle of collective responsibility, which the Scottish Ministerial Code defines in the following terms:

"The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained. ... The internal processes through which a Government decision has been made should not normally be disclosed." (Scottish Ministerial Code, 2018 edition, paragraphs 2.1 and 2.4)

Cabinet papers are invariably produced on the assumption that they will not be disclosed until a significant amount of time has elapsed.

Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) recognises the need to allow Ministers some private space for discussion. 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 maintaining the process of achieving collective responsibility within a private space within which policy positions can be explored and refined by Ministers in order that the Government, as a whole, can reach a final decision. This private thinking space also allows for 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 between Ministers, which in turn will undermine the quality of the policy-/decision-making process.

Some of the content released has been redacted under section 30(b)(i) (free and frank provision of advice) as this contains free and frank advice in relation to the development of wider Scottish Government policies.

Additionally, some of the content released has been redacted under section 29(1)(d) (operation of any Ministerial private office) as this contains information relating to the operation and personal administrative support to a Minister.

Finally, some content within one of the documents refers to legal advice or is informed directly by legal advice (section 36(1)) and has been redacted on that basis.

These exemptions are 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 exemptions.

We recognise that there is some public interest in release of information because of the need for open and transparent government and the contentious nature, and interest in the policy topic concerned. However, this is outweighed by the public interest on the basis that release would inhibit Ministers' ability to have a private space in which to consider the development of Scottish Government policy decisions.