

## Exemptions

### Exemption under Section 25(1) – Information publicly available

Section 25(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) exempts information from disclosure where the requester can reasonably obtain the information without asking for it under FOISA. If, however, you do not have internet access to obtain this information from the websites listed, then please contact me again and I will send you paper copies.

### Exemption under Section 38(1)(b) – personal data

An exemption under section 38(1)(b) of FOISA applies to some of the information requested because it is personal data of individuals included within the correspondence and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation. 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. Redactions have been made where that is the case.

### Exemption under Section 29(1)(a) – Government policy

An exemption under section 29(1)(a) of FOISA applies to some of the information you have requested. This is where material relates to the formulation and development of Government policy. 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 election 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.

### Exemption under Section 30(b)(i) – effective conduct of public affairs

The exemption under sections 30(b)(i) of FOISA 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. The exemption recognises the need for Ministers and officials to have a private space within which to seek advice and views before reaching the settled public position which will be given in whatever final material is published. Disclosing the content of free and frank briefing

material would substantially inhibit such briefing 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 free and frank advice and views between officials and Ministers can take place. It is clearly in the public interest that Ministers can properly provide sound information to Parliament (to which they are accountable), and robustly defend the Government's policies and decisions. They need full and candid advice to enable them to do so. Premature disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.