

## ANNEX

### Explanation of exemptions applied

*Section 25(1):* An exemption under section 25(1) applies to some of the information requested, specifically the published extracts of the relevant group conversation. As this information is already published and available to you, we do not have to provide you with copies. If, however, you are unable to access it from the website linked in the response letter, please let us know.

*Section 30(b)(i) and (ii):* An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) and section 30(b)(ii) (free and frank exchange of views for the purposes of deliberation) applies to some of the information requested.

The exemption under s.30(b)(i) 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 to have a private space within which to seek advice and views from officials before reaching the settled public position which will be given in whatever final statements are used. Disclosing the content of free and frank advice or briefing material will substantially inhibit such advice or briefing in the future, particularly because these discussions relate to a sensitive or controversial issue.

The exemption under s.30(b)(ii) 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 Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view.

The exemption under s.30(b) is subject to the 'public interest test'. Taking account of all the circumstances of this case, we have therefore considered whether the public interest in disclosing the information outweighs the public interest in applying the exemptions. 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, on this occasion, there is a greater public interest in allowing Ministers and officials a private space within which policy positions can be explored and refined until the Government as a whole can adopt policies that are sound and likely to be effective, and to allow discussion of policies in the wider UK context. This private thinking space also allows for all options to be properly considered, so that good decisions can be taken. 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 decision-making process, which would not be in the public interest.

*Section 36(1):* An exemption under section 36(1) applies to some brief sections of the information you have requested because it contains details of legal advice and is subject to legal professional privilege.

*Section 37(1)(b):* An exemption under section 37(1)(b) of FOISA applies to documents that are (i) lodged with a person conducting an inquiry or arbitration, for the purposes of that inquiry or arbitration or (ii) created by a person conducting an inquiry or arbitration for the purposes of that inquiry or arbitration. 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. It has been applied here only to the group discussions discussed above supplied to the SG by the UK Covid-19 Inquiry and subject to their general restriction order (under s.38(1)(b)(ii)), and to personal exchanges from the individual conversations that do not constitute government business (under s.38(1)(b)(i)).

*Section 38(1)(b):* An exemption under section 38(1)(b) (personal information) of FOISA applies to some of the information in the message exchanges because it comprises personal data of a third party and disclosing it would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998.