

Reasons for not providing information

Section 28(1) – relations within the UK

An exemption under section 28(1) of FOISA (relations within the UK) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially relations between the Scottish Government and the UK Government. It is essential for the effective administration of the UK as a whole that there should be regular, and often private, communications between the Scottish Government and the UK Government. The release of these communications about the repatriation of Mr Salmond will mean that the UK Government is likely to be more reluctant to share similar information with the Scottish Government in future, which would reduce both the frequency and openness of communications between the Scottish Government and other UK administrations.

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 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 good relations between the Scottish Government and the UK Government and in protecting the free exchange of information between the administrations to ensure that we keep each other fully informed about matters of mutual interest, such as developing arrangements for the repatriation of Mr Salmond. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

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 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 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 press lines are used. Disclosing the content of these discussions between officials on press lines relating to the repatriation of Mr Salmond will substantially inhibit such discussions in the future, because officials will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public, particularly while discussions relate to a sensitive issue such as the death of a former First Minister.

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 exemptions. We have found that, on balance, the public interest lies in favour of upholding the

exemptions. 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 officials can provide free and frank advice and views to Ministers in terms of lines to be issued to the press. 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.

Section 30(c) – 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 and officials to be able to communicate, often in confidence, with external stakeholders on a range of issues, including in this case the repatriation of a person who has passed away abroad. Disclosing the content of these communications, 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 if they believe that their views are likely to be made public, particularly while these discussions relate to a sensitive issue such as the death of a loved one. 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 communicate with appropriate external stakeholders as part of the process of exploring and refining the Government's position on ongoing deliberations, particularly relating to sensitive issues such as these, 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.

Section 38(1)(b) – applicant has asked for personal data of a third party

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party, ie email addresses, names, phone numbers etc., 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.