Annex B

Reasons for not providing information

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

Exemptions under sections 30(b)(ii) (Free and Frank Exchange of Views for the Purposes of Deliberation) and 30(c) (Prejudice to the Effective Conduct of Public Affairs) of FOISA apply to some of the information requested. The rationale for withholding this information is as follows. This information is taken from documents about sensitive issues, and issues that clearly are still sensitive despite the documents being from 2022. They are issues which are highly likely to be asked about in the Chamber by other MSPs. Briefs such as this are essentially official's advice to the First Minister on how to handle the issue on that day in the event that it arises – with specific reference to the challenges they might have encountered that day. They are also designed to be able to respond to questions that the First Minister has no advance knowledge of. If this advice to the First Minister on how to handle sensitive issues is released into the public domain, it curtails civil servant's ability to engage in free and frank discussions with the First Minister. If this space for free and frank exchange of views and advice was to diminish, then it is likely that the First Minister would seek to rely on more verbal-only and political briefing, meaning they are less-well briefed across a broad range of issues and less able to answer questions thoroughly in the chamber - which is not in the interest of the effective conduct of public affairs, and in turn is decidedly not in the public interest.

An exemption under section 30(c) of FOISA (Prejudice to the Effective Conduct of Public Affairs) also applies to some of the other information requested. The reason why this exemption applies is because releasing information about plans for future Scottish Government publications, which does not reflect final decisions taken, would result in

inaccurate information on the Scottish Government's proposals for future publications being published, thereby undermining the Scottish Government's ability to effectively and accurately engage and communicate with the public.

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 future publications without the risk of these proposals being prejudiced by inaccurate information, which doesn't reflect final decisions taken, being released while the Scottish Government's work was still under development.

Section 38(i)(b) - Personal Information

An exemption under section s.38(1)(b) of FOISA (Personal Information) applies to s of the information you have requested because it is the personal data, 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.