

Exemptions applied**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, the UK Government and the other devolved administrations. The release of diplomatic telegram communications will mean that the UK Government is likely to be more reluctant to share such 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.

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 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 and regularly informed about matters of mutual interest. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

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, substantially inhibit the ability of officials to provide candid and comprehensive advice to Ministers. 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 that will be communicated externally. Disclosing the content of briefing material prepared for the Cabinet Secretary’s meetings with international business stakeholders, and government counterparts, would significantly inhibit such advice in the future, particularly as these briefings often include commercially sensitive information, and information about individuals.

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 briefings for meetings. It is clearly in the public interest that Ministers can properly prepare themselves for meetings in which commercially sensitive information will be relevant. They need full and candid advice from officials 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.

Section 38(1)(b) – Personal information

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 names and contact details of individuals, 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.