

ANNEX REASONS FOR NOT PROVIDING INFORMATION

An exemption applies

An exemption under section 25(1) of FOISA (information otherwise accessible) applies to some of the information you have requested. Under section 25(1) of FOISA, we do not have to give you information which is already reasonably accessible to you.

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 some public interest in the release because of the relevance of the material to the request, however this is outweighed by the public interest in that information being already readily accessible and in the public domain. An exemption under section 30(b)(ii) of FOISA (the free and frank exchange of views for the purposes of deliberation) applies to some of the information you have requested. The reasons for applying this exemption are set out below.

"The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained. ... The internal processes through which a Government decision has been made should not normally be disclosed." (Scottish Ministerial Code, 2018 edition, paragraphs 2.1 and 2.4)

Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) recognises the need to allow Ministers some private space for discussion. 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 the process of achieving collective responsibility within a private space within which policy positions can be explored and refined by Ministers in order that the Government, as a whole, can reach a final decision. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the policy-/decision- making process.

An exemption under section 36(1) of FOISA (Confidentiality in legal proceedings) applies to some of the information you have requested because it is legal advice and disclosure would break legal professional privilege.

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 some public interest in release as part of an open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.