

Appendix A

REASONS FOR NOT PROVIDING INFORMATION

Exemptions apply

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 for officials to have a private space within which to provide free and frank advice to others such as our Board before the Scottish Housing Regulator reaches a settled public view. Disclosing the content of free and frank advice on all the assurance reports that been submitted to SHR Board and listing the evidence sources will substantially inhibit the provision of such advice, particularly because these discussions can relate to a sensitive regulatory issues.

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 being open and transparent, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide full and frank advice to and with Non-Executive Directors of the Board, as part of the process of exploring and refining the Scottish Housing Regulator's position on sensitive regulatory matters. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good decisions can be taken. Disclosure is likely to undermine the full and frank discussion of issues between officials, which in turn will undermine the quality of the Scottish Housing Regulator's decision making process, which would not be in the public interest, and would damage our ability to fulfil our statutory remit to protect the interest of tenants and other service users.

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 officials to have a private space within which to discuss issues and options with our Board and stakeholders before the Scottish Housing Regulator reaches a settled public view. Disclosing the content of these discussions with our Board on how we deal with some regulatory issues will substantially inhibit such discussions in the future, because these stakeholders will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public, particularly while these discussions relate to a sensitive issue. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good decisions can be taken. Disclosure is likely to undermine the full and frank discussion of issues between officials, which in turn will undermine the quality of the Scottish Housing Regulator's decision making process, which would not be in the public interest, and would damage our ability to fulfil our statutory remit to protect the interest of tenants and other service users.

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 to communicate with our Board and stakeholders as part of the process of exploring and refining the Scottish Housing Regulator's position on sensitive regulatory matters. This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence. Disclosure is likely to undermine the full and frank discussion of issues between officials and the Board, which in turn will undermine the quality of the Scottish Housing Regulator's decision making process, which would not be in the public interest, and would damage our ability to fulfil our statutory remit to protect the interest of tenants and other service users.

Section 33(1)(b) – Substantial prejudice to commercial interests

An exemption under section 33(1)(b) applies if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person. "Person" includes a public authority, company or partnership and in this case a number of social landlords. Commercial interests relates to commercial trading activity, in this case competitive transfer of housing stock. The exemption in section 33(1)(b) is applied where disclosure would, or would be likely to, cause substantial prejudice. 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 disclosure in this case is likely to undermine potential future transfers, which would not be in the public interest and damage our ability to fulfil our statutory remit to protect the interests of tenants and service users.

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 a small amount of the information requested because it is personal data of third parties, i.e. names and/or contact details of individuals, and disclosing it would contravene the data protection principles in Article 5(1) of the GDPR.

Disclosure would not be fair and lawful, because none of the conditions in Article 6 of the GDPR could be met. In terms of condition 6(f), we consider that disclosure is not necessary for the purposes of the applicant's legitimate interests. However, even if disclosure was deemed to be necessary in that regard, it is overridden by the interests or fundamental rights and freedoms of the data subject(s). The applicant's legitimate interests can be met in a way which interferes less with the privacy rights of third parties, namely by redaction of the relevant personal data.

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.