

REASONS FOR NOT PROVIDING INFORMATION

The Scottish Government does not have some of the information

Ferguson Marine (Port Glasgow) Limited is a company wholly owned by the holding company known as Ferguson Marine (Port Glasgow) Holdings Limited, which itself is owned by Scottish Ministers, established under the Companies Act 2006.

Ferguson Marine is a non-departmental public body (NDPB) and does not carry out its functions on behalf of the Crown. Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of Ferguson Marine and its use of resources. In line with all limited companies, Scottish Ministers, as sole shareholder, have the reserved power to direct Directors to take or refrain from taking specified actions via the Articles of Association. They are not however responsible for day-to-day operational matters such as CEO recruitment, this is a matter for the yards Board of Directors. The Scottish Government has access to the information if required, but does not hold the information centrally.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have some of the information you have requested.

An exemption applies

An exemption under section 38(1)(b) (personal data of a third party) of FOISA applies to some of the information you have requested. This exemption applies to the names of third parties referenced throughout the documents within scope of the request. The Scottish Government has a policy of not disclosing the names of officials who are not Senior Civil Servants. The names of non-senior civil servants have been redacted to protect their privacy. There is also other personal information relating to the Ferguson Marine CEO.

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.

An exemption applies, subject to the public interest test

Exemptions under sections 30(b)(i) and 30(b)(ii) of FOISA (free and frank advice and exchange of views) apply to some of the information requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation. The exemptions recognise the need for Ministers and officials to have a private space within which to give and seek advice and views before reaching a settled public position - which will be given in whatever final media and other public lines are used. Disclosing the content of free and frank briefing material could substantially inhibit such briefing in the future.

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 official can express free and frank advice to each other,

and to Ministers. It is clearly in the public interest that Ministers can properly make a decision on the media lines that relate to the Scottish Government's position. 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.

An exemption applies, subject to the public interest test

While our aim is to provide information whenever possible, in this instance 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 the recruitment of Chief Executives Officers of NDPB's like Ferguson Marine. Disclosing the content of these communications or information, 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 provide this information if they believe that it is likely to be made public, particularly while these discussions relate to a sensitive issue such as remuneration negotiations. 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 inform Ministers.

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 informing Ministers and Officials about remuneration negotiations at an NDPB like Ferguson Marine. This private space is essential to enable all stages of negotiations to be properly considered, so that all parties are fully informed. Disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the policy making process, which would not be in the public interest.