

REASONS FOR NOT PROVIDING INFORMATION

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, i.e. names and contact details. Disclosing this information 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.

Section 33(1)(b) – Commercial interest and the economy

An exemption under section 33(1)(b) of FOISA applies to the information you have requested because it is likely to prejudice substantially the commercial interests of the company and the Scottish Government as an interested party.

Releasing this information will impact the current operational abilities, including the delivery of the vessels and future viability of commercial operations of the company involved at substantial risk. There is also a contractual agreement between the businesses providing the advice to Government that the information provided is commercially sensitive, whilst considering the public interest tests it would be inappropriate to publish the information.

This exemption is subject to the ‘public interest test’. Therefore, taking into 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 of this information to provide transparency on information given to the Ministers and officials, on costs of the projects and programmes funded from the public purse and on the progress of these particular projects. However, this is outweighed by the public interest in limiting disruption to the costs and delivery schedule of the vessels, maintaining current and safeguarding the future commercial sustainability of the Ferguson Marine operations, in which people of Scotland have a vested public interest in, that would be adversely affected should the information be released.