

Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation [*in relation to communications/meetings with external stakeholders*]

An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some 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 external stakeholders before the Scottish Government reaches a settled public view. Disclosing the content of these discussions with stakeholders on risks in relation to delivery both vessels 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 are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as financial aspects of delivery both vessels.

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 exploring and refining the Government’s position on risk register until the Government as a whole can adopt a decision that is sound and likely to be effective. 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, such as that provided by Ferguson Marine Port Glasgow. Premature 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 decision making process, which would not be in the public interest. There is also an important public interest in avoiding the loss of stakeholder confidence in cases where they thought they were providing comments in confidence, which would be inevitable if an individual’s contribution was released against their wishes.

Section 33(1)(b) – commercial interests

An exemption under section 33(1)(b) of FOISA applies to some of the information requested because disclosure of the information would, or would be likely to, prejudice substantially the commercial interests of any person. “Person” includes a public authority, company and partnership. 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 exemption. We have found that, on balance, at this time the public interest lies in favour of upholding the exemptions. While we recognise that there is a general public interest in how public money is spent, there is a greater public interest in protecting the integrity of the procurement process and the commercial interests of tenderers, so that they are not deterred from bidding for similar contracts in the future.

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 /some of/all of the information requested because it is personal data of a third party names 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.