

REASONS FOR NOT PROVIDING INFORMATION

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 external stakeholders before the Scottish Government reaches a settled public view. Disclosing the content of these discussions with Woodbank Marine on the future of Ferguson Marine (Port Glasgow) (Holdings) Ltd 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 because these discussions relate to a sensitive or controversial issue.

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 the future of Ferguson Marine (Port Glasgow) (Holdings) Ltd, 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 Woodbank Marine. 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.

Section 30(c) – substantial prejudice to the effective conduct of public affairs

An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information you 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 matters of a commercially sensitive nature. Disclosing the content of these communications, 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 participate in meetings or provide their views fully and frankly if they believe that their views are likely to be made public. Discussions remain ongoing and decisions have not yet been taken. These discussions relate to detailed and sensitive commercial matters. Disclosure of the information requested 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 informed decisions.

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 the future of Ferguson Marine (Port Glasgow) (Holdings) Ltd, 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 Woodbank Marine. 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.

Section 33(1)(b) – Commercial Interests

An exemption under section 33(1)(b) of FOISA (commercial interests) applies to some of the information requested. This exemption applies because disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of Woodbank Marine. Disclosing this information would be likely to offer competitors an advantage.

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 and transparent government, and to help account for the expenditure of public money. However, there is a greater public interest in protecting the commercial interests of companies which Scottish Government contracts, to ensure that we are always able to obtain the best value for public money.

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.