

## REASONS FOR NOT PROVIDING INFORMATION

### **Sections 30(b)(i) and 30(b)(ii) – free and frank exchange of views for the purposes of deliberation**

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 to have a private space within which to seek advice and views from officials before reaching the 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 protecting there is a greater public interest in protecting the integrity of the procurement process and the commercial interests of tenderers. It is clearly in the public interest that Ministers can properly consider all options, and decisions can be taken on full informed advice and evidence, they require full and candid advice from officials to enable them to do so. 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.

### **Section 33(1)(b) – Commercial Interest and the Economy**

An exemption under section 33(1)(b) of FOISA applies to some of the information you have requested because it is likely to prejudice substantially the commercial interests of Ferguson Marine. These matters concern information about ongoing trading companies operating in a highly competitive market - release of this information could benefit commercial competitors and prejudice the otherwise continued business operations of the companies.

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 to ensure full transparency. However, there is a greater public interest in protecting the commercial interests of companies which enter into, Scottish Government contracts, to ensure that we are always able to obtain the best value for public money.

### **Section 38(1)(b) – Personal data**

This exemption applies to some of the information requested because it is personal data of a third party, i.e. names and contact details, 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