

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 Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions on matters of commercially sensitive information will substantially inhibit such discussions in the future, 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 explore and refine the Government’s position on commercially sensitive matters, until the Government as a whole can adopt a decision that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, so that good decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, 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 requested. Disclosing this information would substantially prejudice our ability to conduct due diligence processes. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption.

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. However, there is a greater public interest in protecting the process of due diligence and ensuring that the Scottish Government is able to conduct this aspect of its business effectively.

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 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 companies 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.

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.