

REASONS FOR NOT PROVIDING INFORMATION

The Scottish Government does not have some of the information

The Scottish Government does not have the information you have asked for.

This is a formal notice under section 17(1) of FOISA that the Scottish Government does not have the information you have requested.

An exemption applies

An exemption under section 38(1)(b) (personal data of a third party) of FOISA applies to some of the information you have requested. This exemption applies to the names of third parties referenced throughout the documents within scope of the request. The Scottish Government has a policy of not disclosing the names of officials who are not Senior Civil Servants. The names of non-senior civil servants and Ferguson Marine employees have been redacted to protect their privacy. The contact information of all parties is also redacted throughout. 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.

An exemption applies, subject to the public interest test

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 any person. "Person" includes a public authority, company and partnership. Disclosing this information would be likely to give Ferguson Marine's competitors an advantage in future similar tendering exercises, which would substantially prejudice their ability to submit competitive tenders and so could significantly harm their commercial business. This exemption is also applied where the material relates to live procurement exercises. Disclosing the information would provide market intelligence that otherwise would not be available thus impacting on the ability of the business to win contracts. The exemption also applies to the pay negotiations details contained within the documents in scope of the request.

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. 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.

While our aim is to provide information whenever possible, in this instance 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 Minister and 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 the Ferguson Marine management 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.

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 a private space within which officials and external stakeholders can provide free and frank advice to Ministers.

It is clearly in the public interest that Ministers can properly consider all options and decisions can be taken on fully informed advice and evidence. They need 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.