

ANNEX

Section 17: Notice that information is not held

(1) Where –

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

Section 33(1)(b) – Substantial prejudice to commercial interests

Section 33 of FOISA contains four distinct exemptions. Information may be withheld if:

- disclosure would (or would be likely to) prejudice substantially the commercial interests of any person or organisation

We recognise that there is a public interest in the release of this information as part of an open, transparent and accountable government and to inform public debate. We also recognise the public interest in Ferguson Marine and in how the government works with companies such as Ferguson Marine when public funds are involved. However, given the importance of the business to Scotland, we believe that this is outweighed by the public interest in protecting the trust of Ferguson Marine and companies that work with Ferguson Marine in their relationship with the Scottish Government. It is of vital importance to Scotland, and the people of Scotland, that the Scottish Government can intervene to protect jobs and the wider economy. The public interest lies in protecting some sensitive information in the service of allowing future interventions.

It is essential that the SG can continue to have a productive relationship with companies like Ferguson Marine (FMPG), and that Ferguson Marine can continue to have productive relationships with other external companies, who run businesses of national and local importance to Scotland. The shipyard is a significant employer in the local area, and SG has significant interest in the business. Disclosure of some of the commercial names contained within the document would substantially prejudice the conduct of public affairs

- a) by impacting on the ability of Scottish Ministers' ability to negotiate in relation to FMPG;
- b) by making distressed businesses less likely to engage with Scottish Government support;
- c) removing the private space for consideration that is required by government to make decisions in relation to a significant contract with implications for jobs and the economy.

Section 38(1)(b) – Personal Information

Section 38 of FOISA contains four exemptions, all relating to personal information. Information is exempt from disclosure if it is:

- **the personal data of a third party – but only if other conditions apply (section 38(1)(b));**

We are applying 38(1)(b) to a small amount of information. The information being withheld under 38(1)(b), highlighted in yellow in this case, consists of names of individuals within the Scottish Government. As such those individuals can be identified from this information and therefore it is personal data as defined by section 3(2) of the DPA 2018.

None of the personal data being withheld falls into any of the special categories of personal data, or is data relating to criminal convictions, offences, or related security measures.

The Scottish Government has a general approach of disclosing information about senior members of staff, releasing details of those within senior civil service roles and officials with relatively senior roles that are public facing, but withholding those details for more junior members of staff.

It is the first data protection principle in Article 5(1) of the GDPR which would be contravened through release of this information, 5(1)(a), which states that personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject. It would be unfair to release the information because the individuals in question who are more junior members of staff would not expect their personal data to be processed in this way and we do not consider the processing necessary for the purpose of meeting the request. We do not consider that we have a lawful basis under which to process the personal data for the purposes of answering the request.

In considering that 5(1)(a) will be contravened, we have concluded that the only condition that could apply to allow us to process the data to answer the request is 6(f)

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”

The Commissioner’s guidance indicates that this is likely to be the only condition of relevance to processing personal data for the purposes of responding to FOI requests.

We are not aware of any legitimate interests that the applicant has in the names and direct contact details of officials, or that identifying the individuals would aid in the understanding of the withheld information. Even if the requester did have legitimate interests, we do not believe these would outweigh the individuals’ interests in protecting their privacy.

We therefore consider that this information was exempt from disclosure under section 38(1)(b) of FOISA.

From: [REDA] on behalf of [Cabinet Secretary for Wellbeing Economy, Fair Work & Energy](#)
To: [David Tydeman](#); andrew.miller@fergusonmarine.com
Cc: [Cabinet Secretary for Wellbeing Economy, Fair Work & Energy](#)
Subject: Urgent - meeting today 14:45 with Cab Sec WEFWE
Date: 07 February 2024 12:01:20
Attachments: [image003.png](#)
[image004.png](#)
Importance: High

Hello both,

The Cabinet Secretary needs to speak to you both urgently today please. Please use the teams link below for a meeting at 14:45 for around 5/10 minutes.

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to](#) [REDACTED] [g](#)

Meeting ID

Passcode: [REDACTED]

[Download](#) [Join on the web](#)

SCOTS Connect - Please note - You must have the explicit permission of the organiser to record this meeting and its attendees, using any technology.

[Learn more](#) | [Help](#) | [Meeting options](#)

Thank you very much

[(she/her)]

Private Secretary to the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy – Neil Gray MSP

Scottish Government | St Andrews House Edinburgh EH1 3DG | [REDACTED]

CabSecWEFWE@gov.scot



All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [David Tydeman](#)
To: [Cabinet Secretary for Wellbeing Economy, Net Zero and Energy](#); [Andrew Miller](#)
Subject: RE: URGENT: Meeting w/t the Cabinet Secretary, Mairi McAllan - TOMORROW
Date: 28 February 2024 15:02:09

Yes, I can make this work
d

From: [REDACTED] @gov.scot [REDACTED] @gov.scot > **On Behalf Of**
CabSecWENZE@gov.scot
Sent: Wednesday, February 28, 2024 2:58 PM
To: David Tydeman <david.tydeman@fergusonmarine.com>; Andrew Miller
<andrew.miller@fergusonmarine.com>
Cc: CabSecWENZE@gov.scot
Subject: URGENT: Meeting w/t the Cabinet Secretary, Mairi McAllan - TOMORROW
Importance: High

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear David Tydeman and Andrew Miller,
Apologies for the short notice, but the Cabinet Secretary for Wellbeing Economy, Net Zero & Energy, Ms Mairi McAllan, would welcome the opportunity to have a short call tomorrow with you both.

We would like to suggest virtually from **10:50 – 11:15**.
Grateful if you both could confirm receipt and acceptance of this meeting time.

Thank you,

[REDACTED]

I Assistant Private Secretary (Diary)

Private Office of Mairi McAllan, Cabinet Secretary for Wellbeing Economy, Net Zero and Energy

I St Andrew's House | Regent Road | Edinburgh | EH1 3DG |

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please destroy the email, remove any copies from your system and inform the sender immediately by return.

Communications with the Scottish Government may be monitored or recorded in order to secure the effective operation of the system and for other lawful purposes. The views or opinions contained within this e-mail may not necessarily reflect those of the Scottish Government.
