



E: david.stevenson@gov.scot

Mr Paterson  
[request-522674-180490a0@whatdotheyknow.com](#)

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Our ref: FOI/18/002772  
29 October 2018

Dear Mr Paterson,

**REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)**

Thank you for your request dated 30 September 2018 under the Freedom of Information (Scotland) Act 2002 (FOISA)

Your request

You asked for all information held about the £10 million restructuring loan facility (with no fixed repayment prior to 2026) granted to Burntisland Fabrications Limited (Bifab) in 2018. This should include, but is not limited to (A) all internal memorandums and emails and (B) the loan agreement.

Response to your request

While our aim is to provide information whenever possible, in this instance we are unable to provide the information you have requested because an exemptions under - section 30(c) (effective conduct of public affairs), and section 33(1)(b) (commercial interests) of FOISA applies to that information. The reasons why that exemption(s) applies are explained in the Annex to this letter.

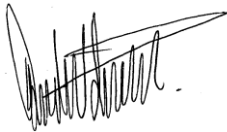
Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to Kersti Berge, Director of Energy & Climate Change The Scottish Government, 5 Atlantic Quay, 150 Broomielaw,

Glasgow G2 8LU [Kersti.berge@gov.scot](mailto:Kersti.berge@gov.scot) . Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:  
<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Kind regards

A handwritten signature in black ink, appearing to read 'David Stevenson', with a long horizontal stroke extending to the right.

David Stevenson

## REASONS FOR NOT PROVIDING INFORMATION

### Exemptions applying which are subject to the public interest test

An exemption under **section 30(c) of FOISA** applies to all of the information you have requested.

It is essential for officials to be able to communicate, often in confidence, with external stakeholders on a range of issues, including issues of an operational or financial nature. The Scottish Government can only provide effective support to some loan recipients where this is provided in confidence with some degree of anonymity due to the nature in of the environment in which the loan recipient operates. It is important that the Scottish Government is able to engage effectively in discussions to ensure that any financial support or other issues are supported as robustly as possible and that sufficient research has been undertaken, sought, communicated and developed to ensure that we are engaging in work that is in the interests of best value for the people of Scotland before consideration of whether financial funding should be provided and when. Disclosing the full terms of the loan in these cases is likely to undermine stakeholder trust in the Scottish Government and will substantially inhibit negotiations of this type of issue in the future. In addition, disclosing the terms on which the Scottish Government lend for specific purposes would dilute our negotiating position and make it much more difficult to negotiate with sponsors on The Scottish Government's behalf. This 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. We acknowledge that there is also a public interest in providing information which informs Scottish Government decisions and allows scrutiny of the appropriate use of public funds.

However, we have determined that 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 operations and financial position of loan applicants and to determine the appropriateness of continued support. Premature disclosure is likely to undermine the quality of the decision making process, which would not be in the public interest. Additionally there is also a strong public interest in protecting the Scottish Government's ability to secure the best value, disclosing the full terms of loan provided would undermine our ability to achieve best value, because it would

set a precedent and reveal out negotiating position which in turn would not be in the public interest.

An exemption under **section 33(1)(b) of FOISA** applies to some of the information you have requested including the names of the recipients and the purposes of the loan. This exemption applies to information whose disclosure would, or would be likely to, prejudice substantially the commercial interests of the loan recipients. This exemption also applies to information whose release could hinder those companies from continuing to operate successfully in a commercial environment after the release of commercially sensitive details of their operation and the nature of support they are receiving. This exemption has been applied in cases where loan recipients are operating in commercially sensitive environments.

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 because disclosure of the recipient and the purpose of the loan (in general terms to support economic activity) would be endangered if the details were not protected. We recognise that there is strong public interest in releasing the information because loan arrangements should be as transparent as possible. However, this is outweighed by the public interest in ensuring that the purpose for which the loan is made is not undermined by releasing information which worsens the loan recipients' commercial position and therefore threatens the continuation of economic activity from which the public benefits.