

G Scott
Sent by email: request-669933-
42e0d51a@whatdotheyknow.com

Our ref: 2019/0024482
8 July 2020

Dear G Scott,

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

Thank you for your request dated 11 June 2020 under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

“You asked for the last ten sets of minutes of meetings, held prior to 6 May 2020, relating to Bifab (Burntisland Fabrications).”

Response to your request

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because of exceptions under section 30(b)(i) – free and frank provision of advice; section 30(b)(ii) – free and frank exchange of views; section 33(1)(b) – commercial interests; and section 38(1)(b) – personal data of a third party. The reasons why these exceptions apply are explained in the Annex A to this letter.

The information that we are able to provide is included in Annex B to this letter.

Your right to request a review

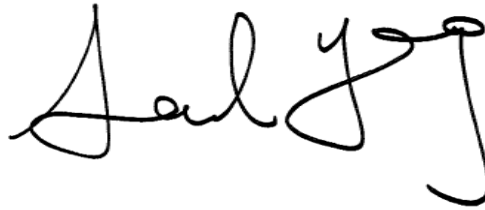
If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to Kersti Berge, Director, Energy & Climate Change Division at kersti.berge@gov.scot. Your review request should explain why you are dissatisfied with this response, and 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>.

I hope you have found this response helpful.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'A. Young'.

Andrew Young
Energy Supply Chain Policy Officer

Exemptions under Sections 30(b)(i) (free and frank provision of advice) and 30(b)(ii) (free and frank exchange of views) of FOISA 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.

Section 30(b)(i) recognises the need for Ministers and officials to receive advice within a private space before the Scottish Government reaches a settled public view. Similarly, Section 30(b)(ii) recognises the need for Ministers 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 certain aspects of the content of these discussions with Burntisland Fabrications Ltd (BiFab), DF Barnes, Grant Thornton, and our Enterprise Agencies would substantially inhibit such discussions in the future, because these stakeholders would be reluctant to provide their advice and views fully and frankly if they believe that those views are likely to be made public. This is a particular risk when discussions relate to a sensitive or controversial issue such as commercial negotiations.

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 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 governance, and to inform public debate. However, there is a greater public interest in allowing Ministers and officials to have 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 commercial or financial information, until the Government as a whole can adopt a decision that is sound and likely to be effective.

This private space is essential to enable all options to be properly considered, so that good decisions can be taken based on fully informed advice and evidence. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of the decision making process, which would not be in the public interest.

An exemption under section 33(1)(b) (commercial interests) of FOISA 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 BiFab and DF Barnes. Disclosing this information would be likely to give BiFab’s competitors an advantage in future similar tendering exercises, which would substantially prejudice the company’s ability to submit competitive tenders and could significantly harm their commercial business.

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, and to help account for the expenditure of public money. However, there is a greater public interest in protecting the commercial interests of companies that enter into contracts with the Scottish Government, thus ensuring that we are always able to obtain the best value for public money.

Exemptions under Section 38(1)(b) (personal data of a third party) of FOISA applies to some of the information requested. This exemption applies to the names of third parties referenced throughout the documents that have been requested. The Scottish Government has a policy of not disclosing the names of officials who are not Senior Civil Servants, therefore the names of some Scottish Government, Scottish Enterprise, and Highlands & Islands Enterprise officials have been redacted. The names of BiFab and DF Barnes employees who are not BiFab board members, and the names of our commercial advisors, have also been redacted to protect their privacy.

Scottish Government/MacRoberts/Grant Thornton – 5th May 2020

Attendees:

Scottish Government

[Redacted]
[Redacted]

MacRoberts

[Redacted]
[Redacted]

Grant Thornton

[Redacted]

Minute of Meeting

No minute of this meeting was taken.

Attendees:

Scottish Government

[Redacted]

[Redacted]

[Redacted]

BiFab

[Redacted]

Grant Thornton

[Redacted]

Minute of Meeting

No minute of this meeting was taken.

Attendees:

Bill Elkington, JV Driver
Chuck Sanders, JV Driver
[Redacted], JV Driver
Jason Fudge, DF Barnes
[Redacted], DF Barnes
Martin Adam, BiFab
[Redacted], BiFab

Andrew Hogg, Scottish Government
[Redacted], Scottish Government

Minute of Meeting

- Previous Board Minutes agreed
- Confident all BiFab yards can reopen with appropriate safety measures in place. DF Barnes are sharing best practice from Canada.
- Accounts will be sent to Companies House by the end of September 2020.
- Challenging times to access finance via the banks with the COVID pandemic amplifying this issue.
- Discussions with Saipem re NNG continue with the fabrication to commence in [Redacted], hoping to close out the contract soon.
- First E&P ready to sail away to Nigeria. Dialogue continues to finalise the [Redacted].
- Keen to speak with Ms Hyslop nearer the summer, once NNG contract is confirmed.
- Next Board meeting to be scheduled for 3 months' time.
- Formal minute of the board meeting will be circulated in due course.

Attendees:

Andrew Hogg

[Redacted]

[Redacted]

[Redacted]

Minute of Meeting

No minute of this meeting was taken.

Attendees:

Scottish Government

[Redacted]

[Redacted]

[Redacted]

BiFab

[Redacted]

Grant Thornton

[Redacted]

Minute of Meeting

No minute of this meeting was taken.

Attendees:

Scottish Government

[Redacted]

[Redacted]

[Redacted]

Grant Thornton

[Redacted]

[Redacted]

MacRoberts

[Redacted]

[Redacted]

Minute of Meeting

No minute of this meeting was taken.

Attendees:

Scottish Government

[Redacted]

[Redacted]

[Redacted]

Grant Thornton

[Redacted]

[Redacted]

Minute of Meeting

No minute of this meeting was taken.

Attendees:

Scottish Enterprise

[Redacted]

[Redacted]

Highlands and Islands Enterprise

[Redacted]

[Redacted]

Scottish Government

[Redacted]

[Redacted]

Minute of Meeting

COVID-19

- SG will provide an update following the board meeting on 29th April. This was meant to take place on 8th April but was postponed due to COVID-19.
- SG highlighted to SE/HIE that [Redacted] permanent staff are on furlough with the business providing the remaining 20% of salaries or more if £2,500 isn't sufficient. [Redacted] staff are also furloughed. SE/HIE were happy to hear this.
- SE/HIE still to respond to [Redacted] – discussions still ongoing but looking to finalise decision this week.

First E&P

- SE flagged they are in contact with BiFab local management over the last couple of days in relation to FEP contract. Apparently there are some [Redacted].
- [Redacted]

Moray East

- BiFab required to make a payment of [Redacted]. Ongoing discussions between SG/BiFab/JVD.

[Redacted]

- BiFab had a positive call 2 weeks ago with [Redacted] with regards [Redacted]. SG [Redacted] will provide a further update on the next call. SE are encouraged by this.

Actions arising from call

1. [Redacted] to provide comments on BiFab's draft prospectus - Done
2. [Redacted] to link [Redacted] with [Redacted] [Redacted] - Done
3. Provide an update to SE/HIE following the board meeting – On next call
4. Provide an update on [Redacted] on the next SE/HIE call – On next call

Attendees

DF Barnes

Jason Fudge

Scottish Government

Andrew Hogg

[Redacted]

Minute of Meeting

Key points

- SG [Redacted], taking on board any points made and committing to speaking to Grant Thornton and MacRoberts this afternoon on the back of it and reverting on timescales.
- We understand from local management that there is an [Redacted].
- Has BiFab decided what [Redacted] and when it intends [Redacted] We understand you have been taking advice from both Mike Webber and MacRoberts on this
 - [Redacted]
- [Redacted]
- Clearance will be required from SCS and Cab Sec. This, and necessary legals, mean that our expectation is that it will be at least 2 weeks until [Redacted].
- Recognise there is a [Redacted] in the [Redacted] which BiFab may be able to [Redacted].
- **We acknowledge that** [Redacted] and SG officials will move as quickly as possible on this **once in receipt of the required info**

Present

DF Barnes

Jason Fudge

Scottish Government

Andrew Hogg

[Redacted]

[Redacted]

[Redacted]

Minute of Meeting

- JV Driver (JVD) providing [Redacted].
- Jason was not of the view that [Redacted] showed a need [Redacted] subsequently confirmed he only reviewed the [Redacted] in detail, [Redacted]. Believes there are [Redacted].
- Andrew noted that we need [Redacted] JVD – and if it doesn't believe [Redacted], we need that in writing
- Jason acknowledged, after SG explanation, why a look [Redacted].
- Jason committed to [Redacted] and pick up with [Redacted] and [Redacted], with revised [Redacted] likely provided Monday [Redacted] put in to the [Redacted]. SG also asked for [Redacted] to be reviewed, noting it has not been [Redacted].
- Andrew noted that in light of [Redacted].