



E: Stuart.Strachan@gov.scot

Mr Paterson

By email to: request-519639-
6649b408@whatdotheyknow.com

Our ref: FOI/18/02623

20 November 2018

Dear Mr Paterson

Further to my letter of 23 October 2018, I have now completed my review of our response to your request under the Freedom of Information (Scotland) Act 2002 (FOISA) for a copy of the loan agreements (or if not produced, a similar document setting out the basis of the loan) for each of the following:

Loan (reference numbers in brackets are as those stated in the appendix to FOI/18/02172).

- (2) £133.2 million @0% interest, due within 1 year
- (3) £39.5 million @0% interest, due within 1 year
- (31) £7.89 million @ 4.22% interest, 11 year term
- (32) £48.2 million @0.10% interest, 25 year term
- (34) £15 million @15% interest, payment at end of loan

As you indicated that you were not appealing against the redaction of information under section 38(1)(b) of FOISA (personal information), I have restricted the scope of this review to the application of exemptions under section 30(c) (substantial prejudice to effective conduct of public affairs) and section 33(1)(b) (commercial interests). I have concluded that the original decision should be confirmed, with modifications. This is because some of the information that was previously withheld is now in the public domain and so the application of the exemption cannot be upheld. I therefore enclose a further copy of the loan agreement with this letter.

I have reconsidered the application of the exemption under section 30(c) of FOISA (substantial prejudice to effective conduct of public affairs) to some of the information you have requested. Disclosing this information would substantially prejudice our ability to provide support to industry because potential recipients of that support would not have confidence in the ability of the Scottish Government to protect their commercial interests if the market-sensitive terms of the support provided to them were to be disclosed. I also consider disclosing this information



could establish precedent on the contractual terms in which the Scottish Government engages, thus directly affecting the Scottish Government's ability to negotiate with other parties in the future.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, I have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. I have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a strong public interest in ensuring effective scrutiny around the use of public money, and in understanding how and why the Scottish Government provides support to industry.

In my view the public interest arguments you make are outweighed by the public interest in protecting the Government's ability to provide support to industry in appropriate cases, particularly where this is for the purpose of maintaining economic activity and employment. I note the arguments you have made with regard to public scrutiny being in the public interest to prevent perceptions of corruption or wrong-doing in decision making. The Scottish Government is however subject to scrutiny by Audit Scotland and they play a key function of ensuring public money is spent properly, efficiently and effectively. The 2017/18 audit of the Scottish Government Consolidated Accounts (which is available at http://www.audit-scotland.gov.uk/uploads/docs/report/2018/s22_180927_scottish_gov.pdf) addresses previous commercial lending to private companies: paragraphs 20 to 23 explain how the Auditor General scrutinises this expenditure.

I have reconsidered the application of the exemption under section 33(1)(b) of FOISA (commercial interests) to some of the information you have requested. This exemption applies because disclosure of this particular information would be likely to prejudice substantially the commercial interests of the company in question. This is because disclosure would reveal commercially sensitive details of the company's operations and the nature of support they are receiving, which would affect its ability to continue to operate successfully in the commercial environment. Such details would provide market intelligence that otherwise would not be available thus impacting on the ability of the business to perform.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, I have again considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. I have concluded 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, in ensuring effective scrutiny around the use of public money, and in understanding how and why the Scottish Government provides support to industry. However, there is a greater public interest in protecting the Government's ability to provide support to industry in appropriate cases, particularly where where this is for the purpose of maintaining economic activity and employment.

You have also expressed dissatisfaction that redactions have not been cross referenced to the claimed reason for redaction. While FOISA does not require us to cross-reference redactions in the way that you suggest, it may be helpful if I explain that the exemptions under section 30(c) (substantial prejudice to effective conduct of public affairs) and section 33(1)(b) (commercial interests) were made only to loan (34), and that no redactions under section 38(1)(b) (personal information) were made to that information. We consider that sections 30(c) and 33(1)(b) both apply to each of the redactions made to loan (34). I hope that this clarifies matters for you.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>. You can also contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

E-mail: enquiries@itspublicknowledge.info
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely

Stuart Strachan
Head of Advanced Manufacturing
Directorate for Economic Development