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E. info@fergusonmarine.com
www.fergusonmarine.com

FMPG/2021/JTAUG21

Sent by email to: [REDACTED]

31 August, 2021

Dear [REDACTED]

**Freedom of Information Request - Partial Disclosure
Freedom of Information (Scotland) Act 2002**

We refer to your freedom of information request sent by email to FOI@fergusonmarine.com dated 1 August 2021. We have dealt with your request under the Freedom of Information (Scotland) Act 2002 (the "FOISA").

Your request for information

You have requested that we provide you with the following information, relating to the time period that Mr Tim Hair has been involved with Ferguson Marine:

1. How many grievances have been submitted which involve, mention, relate to, or are regarding Mr Hair. Please provide summaries of the allegations concerning Mr Hair.
2. How many members of the management team (including contractors) have left Ferguson Marine during the relevant period. Please state their roles and what percentage of the management team this reflects. Please also specify which have resigned and which have been dismissed. For the purposes of this request "management team" means all employees other than shop floor staff.
3. How many allegations of discrimination (of any nature) have been raised by employees or contractors during the relevant period.
4. How many settlement agreements (or any other similar type of compromise related agreements) have been entered into by Ferguson Marine with employees or contractors (whether current or former at the time of the agreement). This includes any post employment agreements. How much has been paid under such agreements (per individual agreement). Where permitted please note the role to which the settlement relates.
5. Please provide details of all claims (formal or informal) raised by former employees (including the nature of the claim). How many of those have been settled?



Registered in Scotland No. SC638457
Registered office: Ferguson Marine (Port Glasgow) Ltd.
Newark Works, Castle Road
Port Glasgow, Renfrewshire, PA14 5NG
VAT number: GB 340 6721 21

Responding to your requests

We confirm that we hold the information requested by you.

We have set out below our response to each request for information made by you. In doing so, we take this opportunity to explain that Mr Tim Hair was appointed as a Director of Ferguson Marine (Port Glasgow) Limited on 19 September 2019. Therefore, when considering your requests, we have taken this date as the start of the time period that Mr Tim Hair has been involved with Ferguson Marine.

As we explain below, some of the information you have asked for cannot be provided because it is exempt from disclosure.

1. *How many grievances have been submitted which involve, mention, relate to, or are regarding Mr Hair. Please provide summaries of the allegations concerning Mr Hair.*

- **Information exempt from disclosure**

We consider the information requested to be the personal data of Mr Hair as it relates to him, i.e. it is about him, linked to him or otherwise has him as its main focus. For that reason, the information is exempt from disclosure under section 38(1)(b) of FOISA. Personal data is exempt from disclosure where disclosure would contravene any of the data protection principles in Article 5(1) of the UK GDPR and section 34(1) of the Data Protection Act 2018, as per section 38(2A)(a) of FOISA.

As a data controller we are required to have a legal basis for all processing of personal data carried out by us, including the release of personal data to third parties. In this case we consider that we do not have a legal basis to provide this personal data to you.

We do not have permission from Mr Hair to provide the information. We further consider that we cannot rely on any legitimate interest to provide the information. After carefully balancing your legitimate interests against the interests or fundamental rights or freedoms of Mr Hair, we have concluded that the legitimate interests served by disclosure of any information held would be outweighed by the unwarranted prejudice that would result to the rights and freedoms or legitimate interests of Mr Hair.

We have concluded that disclosure of the requested information would be unlawful and contravene the data protection principle set out in Article 5(1)(a) of UK GDPR which requires that personal data be processed "lawfully, fairly and in a transparent manner in relation to the data subject".

Section 38(1)(b) of FOISA is an absolute exemption, not subject to the public interest test laid down by section 2(1)(b) of FOISA.

2. *How many members of the management team (including contractors) have left Ferguson Marine during the relevant period. Please state their roles and what percentage of the management team this reflects. Please also specify which have resigned and which have been dismissed. For the purposes of this request "management team" means all employees other than shop floor staff.*

- **Information disclosed**

We can confirm that sixteen (16) members of the management team (including contractors) have left Ferguson Marine since 19 September 2019.

You have also asked for confirmation of the percentage of the management team that this number reflects. As you will appreciate, the departures from the management team cover a period in excess of 23 months, some cover the same role and the size of the management team has changed over time. Therefore, it is not possible to provide a definitive response to this request. We can, however, confirm that the management team (i.e. all employees other than shop floor staff) currently comprises 112 individuals.

- **Information exempt from disclosure**

In relation to the departure of members of the management team, we consider their roles to be personal data under UK data protection law. This is because the individuals are capable of being identified if information about their roles was to be provided. For the same reason, specifying which roles have been the subject of resignation and which roles have been the subject of dismissal or expiry of a fixed term appointment or arrangement could result in the identification of the individuals concerned. Consequently, we consider that this information is also subject to the exemption under section 38(1)(b) of FOISA. Personal data is exempt from disclosure where disclosure would contravene any of the data protection principles in Article 5(1) of the UK GDPR and section 34(1) of the Data Protection Act 2018, as per section 38(2A)(a) of FOISA.

As a data controller we are required to have a legal basis for all processing of personal data carried out by us, including the release of personal data to third parties. In this case we consider that we do not have a legal basis to provide this personal data to you.

We do not have permission to provide the information. We further consider that we cannot rely on any legitimate interest to provide the information. After carefully balancing your legitimate interests against the interests or fundamental rights or freedoms of the former members of the management team, we consider the legitimate interests served by disclosure of any information held would be outweighed by the unwarranted prejudice that would result to the rights and freedoms or legitimate interests of the former members of the management team. We believe that the individuals would not expect this information to be disclosed and that the disclosure would cause harm to the relevant individuals in negatively impacting upon their privacy.

Disclosure of the requested information would, therefore, be unlawful and contravene the data protection principle set out in Article 5(1)(a) of UK GDPR which requires that personal data be processed "lawfully, fairly and in a transparent manner in relation to the data subject".

Section 38(1)(b) of FOISA is an absolute exemption, not subject to the public interest test laid down by section 2(1)(b) of FOISA.

3. *How many allegations of discrimination (of any nature) have been raised by employees or contractors during the relevant period.*

- **Information disclosed**

Two employees or contractors raised allegations of discrimination since 19 September 2019.

4. *How many settlement agreements (or any other similar type of compromise related agreements) have been entered into by Ferguson Marine with employees or contractors (whether current or former at the time of the agreement). This includes any post employment agreements. How much has been paid under such agreements (per individual agreement). Where permitted please note the role to which the settlement relates.*

- **Information disclosed**

The number of settlement agreements / similar type of compromise related agreements

Ferguson Marine (Port Glasgow) Limited has entered into five (5) settlement agreements / compromise related agreements with current / former employees or contractors since 19 September 2019.

- **Information exempt from disclosure**

How much has been paid under such agreements (per individual agreement).

We regard the amount paid under individual settlement / compromise agreement(s) to be commercially sensitive information. We consider this information to be exempt from disclosure under section 33(1)(b) of FOISA as disclosure would, or would be likely to, substantially prejudice our commercial interests.

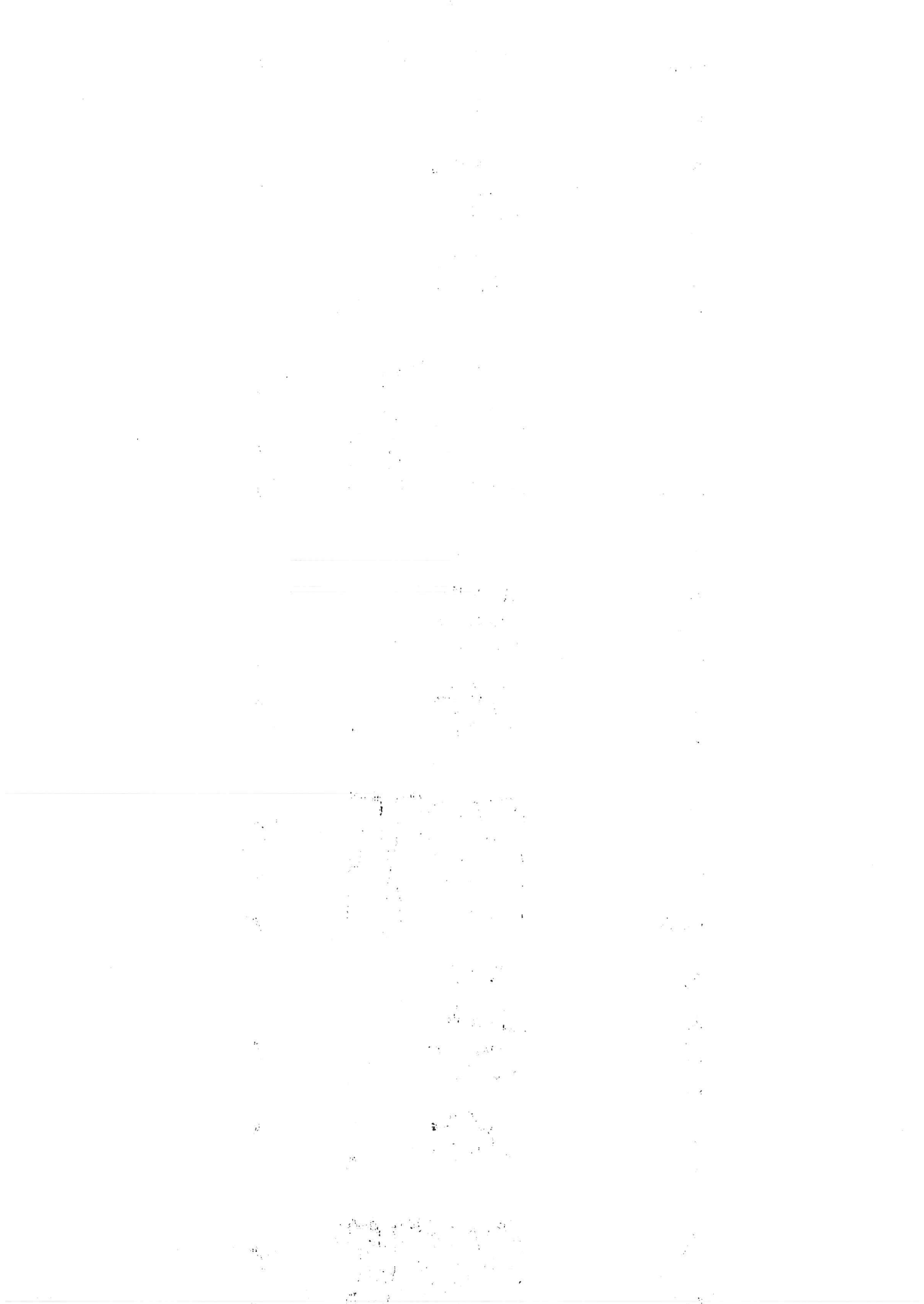
Our primary commercial activity is the provision of shipbuilding, ship repair, fabrication and engineering services. To allow us to engage in this commercial activity, the company employs a significant number of highly skilled and experienced personnel. Where a working relationship has broken down with a member of our workforce, we regard our ability to engage in commercial negotiations on an equal footing with the individual concerned to be an important commercial interest for the company and underpins our key commercial activities.

Our commercial interests would be, or would be likely to be, substantially prejudiced by disclosure of this information for the following reasons:

- We consider that this information could be used by employees, contractors or their respective representatives for benchmarking purposes to inform their negotiation strategy during settlement / compromise discussions should we wish to enter into similar type arrangements in the future. Disclosure of this information would likely place us at a material commercial disadvantage and prevent us from obtaining the most cost efficient terms in respect of any future settlements.
- Disclosing the value of any settlement agreement would also breach the duty of confidentiality owed by us as an employer to our former employees. This would substantially prejudice our commercial interests by materially impacting our ability to engage effectively in settlement / compromise negotiations in future. We are concerned that such agreements will be less appealing if there is a concern by the other party that we will disclose commercially sensitive details after the fact. Settlement agreements can be for us, as with the majority of companies, a more commercially viable option during employment disputes in order to avoid costly litigation.
- Disclosure would cause unwarranted reputational damage to us as an employer as we would be seen not to respect the duty of confidentiality that we owe to our current and former workforce. Substantial harm would be caused by the detrimental effect this would have upon our current and former workforce. We rely on open dialogue and frank discussion with our workers in order to ensure the efficient running of our business. We anticipate employees and/or contractors would be more reticent to engage with us in such discussions following disclosure of such sensitive information.

Therefore, we consider that the harm test in connection with this exemption is met.

Section 33(1)(b) of FOISA is a qualified exemption subject to the public interest test. We have also assessed whether, in all the circumstances of the case, the public interest is better served by disclosing or withholding all the information. Having considered the public interest, our decision is to withhold this information. This is because we consider that, on balance, the public interest in not disclosing the information outweighs the relevant public interest in disclosing the information.



In deciding where the public interest lies, we have considered the following factors:

- the general public interest that information is accessible;
- the general public interest in the employment affairs of companies that are subject to state ownership;
- whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money;
- whether disclosure would contribute to a debate on a matter of public interest;
- whether disclosure would prejudice the protection of an individual's right to privacy;
- the strong public interest in enabling companies (including state owned enterprises) to respect confidences owed to their employees and contractors to ensure they are not discouraged from engaging with them; and
- the strong public interest in enabling companies (including state owned enterprises) to operate without having to disclose commercial information not generally known to the public and importantly its current or previous employees.

Having done so, in our view the balance of the public interest test determines that the information relating to how much has been paid under such agreements (per individual agreement) is exempt from release.

Role to which the settlement relates

We consider that providing details of the roles to which any settlement / compromise related agreements relate could result in the identification of the individuals concerned. Moreover, disclosing how much has been paid under such agreements (per individual agreement) together with details of the role to which the agreement relates would be even more likely to result in specific individuals being identified. Consequently, we consider that this information is exempt from disclosure under section 38(1)(b) of FOISA. As already explained, personal data is exempt from disclosure where disclosure would contravene any of the data protection principles in Article 5(1) of the UK GDPR and section 34(1) of the Data Protection Act 2018, as per section 38(2A)(a) of FOISA.

We refer you to our response above in relation to your second request where you requested details of the roles of management team members who have left Ferguson Marine. The same rationale for applying the exemption provided for by section 38(1)(b) of FOISA applies to this part of your request. Section 38(1)(b) of FOISA is an absolute exemption, not subject to the public interest test laid down by section 2(1)(b) of FOISA.

5. *Please provide details of all claims (formal or informal) raised by former employees (including the nature of the claim). How many of those have been settled?*

- **Information exempt from disclosure**

We regard the details of all claims raised by former employees (including the nature of each claim) and the number of those which have been settled as personal data under UK data protection law. This is because providing details would mean that the individuals would be capable of being identified. Consequently, this information is exempt from disclosure under section 38(1)(b) of FOISA. Personal data is exempt from disclosure where disclosure would contravene any of the data protection principles in Article 5(1) of the UK GDPR and section 34(1) of the Data Protection Act 2018, as per section 38(2A)(a) of FOISA.

As a data controller we are required to have a legal basis for all processing of personal data carried out by us, including the release of personal data to third parties. In this case we consider that we do not have a legal basis to provide this personal data to you.

We do not have permission to provide the information. We further consider that we cannot rely on any legitimate interest to provide the information. After carefully balancing your legitimate interests against the interests or fundamental rights or freedoms of former employees, we consider the legitimate interests served by disclosure of any information held would be outweighed by the unwarranted prejudice that would result to the rights and freedoms or legitimate interests of the former employees. We believe that the individuals would not expect this information to be disclosed and that the disclosure would cause harm to the relevant individuals in negatively impacting their privacy.

Disclosure of the requested information would, therefore, be unlawful and contravene the data protection principle set out in Article 5(1)(a) of UK GDPR which requires that personal data be processed "lawfully, fairly and in a transparent manner in relation to the data subject".

Section 38(1)(b) of FOISA is an absolute exemption, not subject to the public interest test laid down by section 2(1)(b) of FOISA.

We also refer you to the response to your fourth request where we have provided the number of settlement agreements / similar type of compromise related agreements entered into by Ferguson Marine (Port Glasgow) Limited.

Complaints

Complaints about our handling of requests for information should be addressed to: George Crookston, Chief Financial Officer, Ferguson Marine, Newark Works, Castle Road, Port Glasgow, PA14 5NG.

Review of decision

If you are dissatisfied with the handling of your particular request, you have the right to ask us to review our decision. Review requests should be submitted within **forty working days** after the date of receipt of the response to your original request and should be addressed to:

FOI Officer

Ferguson Marine (Port Glasgow) Ltd
Newark Works
Castle Road
Port Glasgow
PA14 5NG

foi@fergusonmarine.com

Please remember to quote the reference number above in any future communications.

Your review request will be forwarded to the appropriate reviewer. You should explain why you are dissatisfied with this response, and your request 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 rights is available on the Commissioner's website at: www.itspublicknowledge.info.

Yours sincerely,

A large black rectangular redaction box covering the signature of the FOI Officer.

FOI Officer