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FMPG/2021/022

20th January 2022

**Freedom of Information Request
Freedom of Information (Scotland) Act 2002**

We refer to your freedom of information request sent by email on 17 December 2021 to FOI@fergusonmarine.com. We have dealt with your request under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request for information

You have requested that we provide you with the following information:

1. All information that relates to Mr Tydeman's remuneration package, whether he will be a full-time employee of FMPG, or on a contractual basis between the Company and a third party. Including, proposed salary, expenses, VAT, relocation package, pension and information related to any potential performance bonus built into the terms of his employment with the company.
2. Whether Mr Tydeman's employment is fixed term or open ended with contract review/s to be determined prior to his taking up this role.
3. Full details of Mr Hair's remuneration proposed for the period 1st January 2022 until his departure and full disclosure of any performance related bonus that is due to him at the termination of his formal contract.
4. The indices on which bonus scheme payments will be measured, if such bonuses have been negotiated as part of Mr Tydeman's contract.



Marine Engineering Ltd.
Kilbride,

Registered in Scotland No. SC485060
Registered office: Ferguson
1 Redwood Crescent, East

Glasgow, UK, G74 5PA
Vat No. 197 101 802

Information disclosed

We can disclose the following information in response to your question 1.

Mr Tydeman's remuneration package is £205,000 and he will be a full-time employee of Ferguson Marine (Port Glasgow) Limited.

We can disclose the following information in response to your question 2.

Mr Tydeman's employment status is as a permanent employee of Ferguson Marine (Port Glasgow) Limited. Mr Tydeman has not been appointed as a Civil Servant. Finally, his contract of employment will not be subject to ongoing review beyond what would normally be expected in an employer / employee relationship.

We can disclose the following information in response to your question 3.

Please see attached appendix 1 which sets out forecasted payments for Mr Hair from January 2022.

Information exempt from disclosure

Having carefully considered your requests, we are of the view that the remainder of the information that you have requested is exempt from disclosure under sections 38(1)(b) and 33(1)(b) of FOISA.

We have provided our analysis of the legislation in line with your outstanding questions below.

1. *All information that relates to Mr Tydeman's remuneration package, whether he will be a full-time employee of FMPG, or on a contractual basis between the Company and a third party. Including, proposed salary, expenses, VAT, relocation package, pension and information related to any potential performance bonus built into the terms of his employment with the company.*

We consider the information requested to be the personal data of Mr Tydeman 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 Tydeman to provide the information. We further consider that we cannot rely on any legitimate interest to provide the information. We have given consideration to the several factors including the legitimate public interest in knowing how public funds have been spent by the company; Mr Tydeman's reasonable expectations; the uniqueness of his position i.e. that it would not be appropriate to consider disclosure via an anonymised salary banding including other company employees; and the unwarranted harm or distress that this disclosure would likely cause Mr Tydeman. After carefully balancing your legitimate interests against the interests or fundamental



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rights or freedoms of Mr Tydeman, 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 Tydeman.

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.

Furthermore, we consider s33(1)(b) of FOISA to apply in relation to the information requested in question 1. We consider that disclosure of the information would, or would be likely to, prejudice substantially our commercial interests.

Ferguson Marine (Port Glasgow) Limited's primary commercial activity is the provision of shipbuilding, ship repair, fabrication and engineering services. To allow the company to engage in this activity, the company recruits and employs a number of highly skilled and experienced personnel, particularly those that form part of the company's senior management. Often the company seeks to recruit key personnel with vast private sector experience so that their knowledge can be leveraged with the aim of increasing the company's viability. This is particularly relevant in the case of Mr Tydeman who has been carefully selected based on his relevant private sector experience. We are of the view that the company's ability to attract such talent will be significantly hampered if we are required to disclose detailed information regarding management remuneration packages, on an individual basis. There is a significant probability that negative press regarding Mr Tydeman's salary and benefits would have the prejudicial effect of discouraging candidates who would otherwise actively seek employment with, or would otherwise be open to working at, Ferguson Marine. We are of the view that an inability to attract the best candidates, in a competitive market, would have a significant prejudicial impact on our immediate and long-term commercial interests.

We are actively engaged in senior level recruitment and as a company we seek to recruit experienced and capable individuals on an ongoing basis. Disclosure would or would be likely to substantially prejudice our abilities to attract the appropriate talent, for the reasons above.

Consequently, we consider that disclosure of a detailed breakdown of Mr Tydeman's agreed remuneration would, or would be likely to, substantially prejudice our commercial interests.

- **Application of the public interest test**

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



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to withhold certain information. In deciding where the public interest lies, we have considered the following factors:

- the general public interest that information is accessible.
- 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; and
- whether disclosure would prejudice the protection of an individual's right to privacy.

Having done so, in our view the balance of the public interest test determines that the information relating to Mr Tydeman's remuneration is exempt from release. Notwithstanding the factors outlined above, we consider that disclosure of such information has the potential to substantially harm us, especially in light of our ongoing recruitment at the time of the request and, for that reason, we do not consider that this would be in the public interest.

4. *The indices on which bonus scheme payments will be measured, if such bonuses have been negotiated as part of Mr Tydeman's contract.*

We consider that this information is likewise exempt from disclosure under s38(1)(b) of FOISA. We consider the information requested to be intrinsically linked to the personal data of Mr Tydeman as it cannot be disclosed without subsequently disclosing his own personal data i.e. the existence or absence of a performance related bonus scheme. 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 noted, 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 Tydeman to provide the information. We further consider that we cannot rely on any legitimate interest to provide the information. We consider that releasing or disclosing personal data which has been created by way of negotiation with a specific individual would constitute a heightened intrusion upon their rights and freedoms or legitimate interests. After carefully balancing your legitimate interests against the interests or fundamental rights or freedoms of Mr Tydeman, 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 Tydeman.



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Complaints

Complaints about our handling of requests for information should be addressed to: FOI@fergusonmarine.com.

Review of decision

If you are dissatisfied with the handling of your 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@fergusonmarine.com.

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

Scottish Information Commissioner

If you are not subsequently content with the outcome of our review, you have the right to apply directly to the Scottish Information Commissioner for a decision. The Scottish Information Commissioner can be contacted at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Email: enquiries@itspublicknowledge.info.

Yours sincerely



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Tim Hair Fee Summary

Invoice No	Month	Invoiced £k				
		Fees	Expenses	Invoiced before VAT	VAT	Invoiced after VAT
Various	Various	£ 156.8	£ 7.7	£ 164.5	£ 32.9	£ 197.4
Various	Various	£ 102.6	£ 6.1	£ 108.7	£ 21.7	£ 130.4
202001	Jan-20	£ 58.4	£ 3.1	£ 61.5	£ 12.3	£ 73.9
202002	Feb-20	£ 54.2	£ -	£ 54.2	£ 10.8	£ 65.0
202003	Mar-20	£ 53.9	£ 5.9	£ 59.7	£ 11.9	£ 71.7
202004	Apr-20	£ 48.7	£ -	£ 48.7	£ 9.7	£ 58.5
202005	May-20	£ 42.3	£ -	£ 42.3	£ 8.5	£ 50.8
202006	Jun-20	£ 51.3	£ 0.9	£ 52.2	£ 10.4	£ 62.6
202007	Jul-20	£ 59.0	£ 3.5	£ 62.5	£ 12.5	£ 75.0
202008	Aug-20	£ 46.2	£ 3.0	£ 49.2	£ 9.8	£ 59.0
202009	Sep-20	£ 48.5	£ 3.0	£ 51.5	£ 10.3	£ 61.8
202010	Oct-20	£ 53.1	£ 2.9	£ 56.0	£ 11.2	£ 67.2
202011	Nov-20	£ 48.5	£ 3.7	£ 52.2	£ 10.4	£ 62.6
202012	Dec-20	£ 57.7	£ 2.2	£ 59.9	£ 12.0	£ 71.9
202101	Jan-21	£ 46.2	£ 3.2	£ 49.4	£ 9.9	£ 59.2
202102	Feb-21	£ 46.2	£ 2.9	£ 49.1	£ 9.8	£ 58.9
202103	Mar-21	£ 53.1	£ 3.4	£ 56.5	£ 11.3	£ 67.8
202104	Apr-21	£ 46.2	£ 3.1	£ 49.3	£ 9.9	£ 59.2
202105	May-21	£ 46.2	£ 3.6	£ 49.8	£ 10.0	£ 59.7
202106	Jun-21	£ 82.8	£ 3.6	£ 86.5	£ 17.3	£ 103.8
202107	Jul-21	£ 43.1	£ 3.8	£ 46.9	£ 9.4	£ 56.3
202108	Aug-21	£ 41.0	£ -	£ 41.0	£ 8.2	£ 49.2
202109	Sep-21	£ 28.7	£ 5.9	£ 34.6	£ 6.9	£ 41.5
202110	Oct-21	£ 41.0	£ 3.2	£ 44.3	£ 8.9	£ 53.1
202111	Nov-21	£ 44.1	£ 3.5	£ 47.7	£ 9.5	£ 57.2
202112	Dec-21	£ 93.1	£ 2.3	£ 95.4	£ 19.1	£ 114.5
202201	Jan-22	£ 39.0	£ 3.4	£ 42.4	£ 8.5	£ 50.9
202202	Feb-22	£ 32.8	£ 1.7	£ 34.5	£ 8.5	£ 43.0
Total		£ 1,564.7	£ 85.8	£ 1,650.4	£ 331.6	£ 1,982.0

Fees after Tax & NI	Expenses	VAT	Total Paid	Date Paid	Payments £k					
					VAT	Total Paid	Date Paid	Days Billed		
£ 84.5	£ 7.7	£ 32.9	£ 125.1	Various	£ 84.5	£ 7.7	£ 32.9	£ 125.1	Various	55.0
£ 57.2	£ 6.1	£ 21.7	£ 85.0	Various	£ 57.2	£ 6.1	£ 21.7	£ 85.0	Various	36.0
£ 31.9	£ 3.1	£ 12.3	£ 47.3	27-Feb-20	£ 31.9	£ 3.1	£ 12.3	£ 47.3	27-Feb-20	20.5
£ 29.6	£ -	£ 10.8	£ 40.4	26-Mar-20	£ 29.6	£ -	£ 10.8	£ 40.4	26-Mar-20	19.0
£ 29.5	£ 5.9	£ 11.9	£ 47.3	27-Apr-20	£ 29.5	£ 5.9	£ 11.9	£ 47.3	27-Apr-20	21.0
£ 26.8	£ -	£ 9.7	£ 36.5	26-May-20	£ 26.8	£ -	£ 9.7	£ 36.5	26-May-20	19.0
£ 23.4	£ -	£ 8.5	£ 31.8	26-Jun-20	£ 23.4	£ -	£ 8.5	£ 31.8	26-Jun-20	16.5
£ 28.1	£ 0.5	£ 10.4	£ 39.0	24-Jul-20	£ 28.1	£ 0.5	£ 10.4	£ 39.0	24-Jul-20	20.0
£ 29.9	£ 1.9	£ 12.5	£ 44.3	26-Aug-20	£ 29.9	£ 1.9	£ 12.5	£ 44.3	26-Aug-20	23.0
£ 25.7	£ 5.0	£ 9.8	£ 40.6	25-Sep-20	£ 25.7	£ 5.0	£ 9.8	£ 40.6	25-Sep-20	20.0
£ 26.9	£ 3.0	£ 10.3	£ 40.2	26-Oct-20	£ 26.9	£ 3.0	£ 10.3	£ 40.2	26-Oct-20	21.0
£ 28.1	£ 2.9	£ 11.2	£ 42.2	26-Nov-20	£ 28.1	£ 2.9	£ 11.2	£ 42.2	26-Nov-20	23.0
£ 25.7	£ 3.7	£ 10.4	£ 39.9	17-Dec-20	£ 25.7	£ 3.7	£ 10.4	£ 39.9	17-Dec-20	21.0
£ 30.6	£ 2.2	£ 12.0	£ 44.7	26-Jan-21	£ 30.6	£ 2.2	£ 12.0	£ 44.7	26-Jan-21	14.0
£ 24.5	£ 3.2	£ 9.9	£ 37.5	26-Feb-21	£ 24.5	£ 3.2	£ 9.9	£ 37.5	26-Feb-21	20.0
£ 24.5	£ 2.9	£ 9.8	£ 37.2	26-Mar-21	£ 24.5	£ 2.9	£ 9.8	£ 37.2	26-Mar-21	20.0
£ 24.3	£ 3.4	£ 11.3	£ 39.0	26-Apr-21	£ 24.3	£ 3.4	£ 11.3	£ 39.0	26-Apr-21	23.0
£ 24.5	£ 3.1	£ 9.9	£ 37.5	26-May-21	£ 24.5	£ 3.1	£ 9.9	£ 37.5	26-May-21	20.0
£ 24.5	£ 3.6	£ 10.0	£ 38.0	25-Jun-21	£ 24.5	£ 3.6	£ 10.0	£ 38.0	25-Jun-21	20.0
£ 43.9	£ 3.6	£ 17.3	£ 64.8	26-Jul-21	£ 43.9	£ 3.6	£ 17.3	£ 64.8	26-Jul-21	22.0
£ 22.8	£ 3.8	£ 9.4	£ 36.0	26-Aug-21	£ 22.8	£ 3.8	£ 9.4	£ 36.0	26-Aug-21	21.0
£ 21.8	£ -	£ 8.2	£ 30.0	24-Sep-21	£ 21.8	£ -	£ 8.2	£ 30.0	24-Sep-21	20.0
£ 15.2	£ 5.9	£ 6.9	£ 28.0	26-Oct-21	£ 15.2	£ 5.9	£ 6.9	£ 28.0	26-Oct-21	14.0
£ 21.8	£ 3.2	£ 8.9	£ 33.9	26-Nov-21	£ 21.8	£ 3.2	£ 8.9	£ 33.9	26-Nov-21	20.0
£ 23.4	£ 3.5	£ 9.5	£ 36.5	22-Dec-21	£ 23.4	£ 3.5	£ 9.5	£ 36.5	22-Dec-21	21.5
£ 49.3	£ 2.3	£ 19.1	£ 70.7	00-Jan-00	£ 49.3	£ 2.3	£ 19.1	£ 70.7	00-Jan-00	17.0
£ 20.6	£ 3.4	£ 8.5	£ 32.5	00-Jan-00	£ 20.6	£ 3.4	£ 8.5	£ 32.5	00-Jan-00	19.0
£ 17.4	£ 1.7	£ 8.5	£ 27.6	00-Jan-00	£ 17.4	£ 1.7	£ 8.5	£ 27.6	00-Jan-00	9.0
£ 836.2	£ 85.7	£ 331.6	£ 1,253.6		£ 836.2	£ 85.7	£ 331.6	£ 1,253.6		595.50