

13/10/2020

Request under The Freedom Of Information (Scotland) Act 2002

Thank you for your Freedom of Information request dated 15 September 2021, in which you requested the following:

Could you please provide me with the contact details for submitting a Freedom of Information Request for Technical Annex A from VisitScotland.

We have provided a redacted version of Annex A which is attached. It is our view in this case, the exemption in section 33(1)(b) of the Freedom of Information (Scotland) Act 2002 applies: *disclosure would (or would be likely to) prejudice substantially the commercial interests of any person or organisation.*

We have considered the areas laid out by the Information Commissioner for consideration when applying this exemption:

Whose commercial interests are likely to be prejudiced and nature of those interest?

Ports featured in the report are likely to have their commercial interests substantially prejudiced by release of information pertaining to details of investment expenditure, their weaknesses and threats as well as named port competitors.

If released, information relating to a port's weakness and threats could offer competitors an advantage. It would allow competitors to know specific details about what each port considers to be a commercial weakness or threat, which could be exploited by a competitor port.

The effect of passage of time must be considered when assessing whether disclosure of information would, or would be likely to, cause substantial prejudice.

The survey was completed by September 2020, however, information contained in the report for each port contains SWOT analysis which includes commentary on pipeline development and commercial activity for the coming years. This makes the information highly commercially sensitive.

Another factor to consider is whether the information is already publicly available.

Information specifically relating to business weaknesses and threats in particular is not available in the public domain. Disclosure of these details would reveal commercially sensitive information linked to each business.

Public Interest Test

It is our view that the exemption applies, therefore we need to consider the public interest test in relation to the information. This means assessing whether, in all the circumstances of the case, the public interest is better served by disclosing or withholding the information. The authority must

identify and set out the competing public interest arguments: (i) as to why the public interest would be served by disclosing the information, and (ii) why it would be served by maintaining the exemption.

(i) Why the public interest would be served by disclosing the information

- Disclosure may contribute to more transparency around port plans and their potential impact on the wider community and/or local economy.
- Disclosure may also enhance scrutiny of decision-making processes and thereby improve accountability and participation.

(ii) Why the public interest would be served by maintaining the exemption

- Disclosure of this redacted information would give other ports a competitive advantage by revealing specific weaknesses and threats, which include references to their advantages and disadvantages to competitor ports.
- Disclosure of the redacted information may unduly influence investment, contract and business decisions which rely on commercially sensitive information not being revealed.
- Disclosure would not contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money because, of those ports which are funded by local authorities, there are no budget expenditure figures contained within the document.

Although disclosure may contribute to transparency of business planning and participation, on balance we consider this can be captured by other statutory processes such as planning as well as growing expectations around community engagement. However, we consider if the information was disclosed, it would undoubtedly put businesses at a competitive disadvantage, and could also jeopardise future business plans which rely on commercial confidentiality. For these reasons, we have provided you with a redacted version of Annex-A.

We hope this information is helpful to you. If, however, you are not satisfied with our response or the manner in which we have dealt with your application, you may in the first instance contact our Chief Executive, Malcolm Roughead, whose contact details are set out below:

Mr Malcolm Roughead
Chief Executive
VisitScotland
Ocean Point One
94 Ocean Drive
Edinburgh, EH6 6JH
Telephone: 0131 472 2201
Fax: 0131 472 2223
E-mail: malcolm.roughead@visitscotland.com

If you wish to request a review of your application under either the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, your request should be submitted to us in writing, or another permanent format (for example e-mail or voice

recording), and be received by us within 40 days of the date of this letter. Any request for a review should also set out, in as much detail as possible, the reasons why you are not satisfied with our response or the manner in which we have dealt with your application.

If you are still not satisfied with our handling of your application after we have responded to your request for a review, you have a right to apply to the Scottish Information Commissioner for a decision on whether we have dealt with your request in accordance with the Act.

The Scottish Information Commissioner may be contacted at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
E-mail: enquiries@itspublicknowledge.info

You also have the right to appeal to the Court of Session in Scotland on a point of law concerning our response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gavin Mowat', written in a cursive style.

Gavin Mowat
Government and Parliamentary Affairs Manager
VisitScotland