



Eich cyf/Your ref
Ein cyf/Our ref ATISN 10061

Llywodraeth Cymru
Welsh Government

11 January, 2016

Dear ,

Request for Information – ATISN 10061

I wrote to you on 23 December regarding your request for information. You asked for a copy of the winning tender submitted for works relating to the A487 Dyfi Bridge.

I can confirm that we hold information relating to the winning tender for the works relating to the A487 Dyfi Bridge. However, details of the winning tender(s) are exempt from disclosure under Section 43(2) of the Freedom of Information Act 2000, information prejudicial to commercial interest and Section 40(2), (third party personal data) of the Freedom of Information Act 2000. The reasons for applying these exemptions are set out at Annex A of this document.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or
FreedomOfInformationOfficer@wales.gsi.gov.uk.

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office,

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Cathays Park
Cardiff
CF10 3NQ

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

ANNEX A

ATISN 10061 - Consideration For and Against Disclosure of Information

When information is released in response to a Freedom of Information Act (FOIA) request, that information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Section 43 (2) – Commercial Interests

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Section 43(2) of the Freedom of Information Act 2000 (FOIA). This states that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it.

Public Interest Test

I recognise the general public interest in openness and transparency that the release of the information would engender so as to help the public gain a better understanding of the decisions made by Government. I also recognise that there is a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

The information captured by the request is commercially sensitive to the successful winning bidder. Releasing this information would be likely to provide competitors with an unfair advantage when submitting future tendering bids because this information will provide details of the winning tender(s) confidential and commercial information. It will also show the quality of the submissions, which are key to winning any Welsh Government procurement competitions. Providing this level of detail is necessary when competing for tenders and bidding for work. Whilst this information would likely be of interest to the company's competitors, I do not believe that it would be of interest to the wider public and would be likely to prejudice the commercial interests of the business involved. It would also be likely to prejudice the winning bidder in securing future potential contracts because competitors would have access to a high level of detail that they otherwise wouldn't have. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest.

I also believe that there exists a public interest in ensuring that private companies, such as these can do so in the knowledge that their efforts will not be prejudiced by the untimely disclosure of commercially sensitive information. I am aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information. In conclusion, I believe that the balance of the public interest therefore falls in favour of withholding this information.

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 requires third party personal data to be withheld in circumstances where its disclosure would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (DPA).

We consider that disclosure of this personal data would breach the first data protection principle. The first data protection principle requires that processing personal data must be fair and lawful and, in particular, that it should not be processed unless one of the conditions set out in Schedule 2 of the DPA is met.

In determining whether disclosure would contravene the first data protection principle, we have considered whether disclosure would amount to fair and lawful processing of those individuals' personal data. The individuals concerned do not have public facing roles. We consider that those individuals would be under the reasonable expectation that their information would remain confidential and not disclosed to the public at large. As such, we do not consider that disclosure of the redacted personal data would be fair.

The public authority must decide whether it would be fair to disclose the personal data. If the public authority concludes that it would not be fair, then it must not disclose the information in response to the FOIA request.

In this instance, because the individuals would have had no expectation that their personal data would be released into the public domain, we believe that release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.