



Ein cyf/Our ref ATISN 9624

Llywodraeth Cymru
Welsh Government

12 January 2016

Dear ,

Request for Information – ATISN 9624

I refer to your e-mail of 11 July, 2015, in which you asked for copies of all emails between Edwina Hart and the property advisor David Goldstone during 2015. I'm sorry for the delay in responding to your request.

I confirm that we hold information relating to your request. Your request captures 11 pieces of correspondence between Mr Goldstone and the Minister for Economy, Science and Transport, all of which relate to the provision of property advice in Mr Goldstone's capacity as property advisor to the Department for Economy, Science and Transport. I have concluded that the information is exempt from disclosure under Section 36 of the Freedom of Information Act 2000, specifically:

Section 36(2)(b)(i) - inhibiting the free and frank provision of advice;

Section 36(2)(b)(ii) - inhibiting the free and frank exchange of views for the purposes of deliberation;

Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs

Full reasoning for applying the above exemption is attached.

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 Email: 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

ATISN 9624 - Consideration For and Against Disclosure of Information

Section 36 - Effective Conduct of Public Affairs

The Freedom of Information Act 2000 (FOIA) has introduced a two-stage process for considering and using the s36 exemption. Stage 1 is to ascertain whether the basic conditions for triggering the application of the exemption apply. This is the role of the 'qualified person' and in relation to the Welsh Government, the qualified person usually means the First Minister. If the qualified person decides that the information would, or would be likely to, have the specified adverse effect(s), then the exemption is said to be engaged and Stage 2 can commence.

Stage 1 – Engagement of Exemption

The First Minister, as the 'qualified person', has agreed that s36(2)(b)(i), s36(2)(b)(ii) and Section 36(2)(c) are engaged for the following reasons:

Section 36 (2)(b)(i) – inhibiting the free and frank provision of advice for the purposes of deliberation; and Section 36 (2)(b)(ii) – inhibiting the free and frank exchange of views for the purposes of deliberation.

Mr Goldstone was appointed to advise the Department for Economy, Science and Transport on property matters. The captured information consists of correspondence in which advice was provided by Mr Goldstone in an open and frank way. The correspondence also contains exchanges of views that are made in an open and frank way, exploring various options as part of the normal working process. Working in this way provides the Welsh Government with the space and freedom to hold such discussions in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than necessary.

It is normal practice for appointed advisors and Officials to provide advice and exchange views in an open and frank way, and exploring various options as part of the process of deliberation. There is an expectation that these discussions allows Government the space and freedom to hold such discussions in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than necessary. It is believed that disclosure of this information would mean that future discussions would be likely to be inhibited in that they would be less candid, would be likely to lead to less rigorous and in-depth exploration of options and this in turn would harm our deliberations resulting in less robust and effective outcomes, thus compromising the effective working of the Welsh Government with its key stakeholders.

Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs

The captured correspondence relates to options on various properties for the purpose of further development. When looking at purchasing, selling or leasing property, it is necessary to consider the best advice available and the appointment of Mr Goldstone

was part of this process. It is believed that release of this information would prejudice the process of appointing a property advisor. Release of the information would also result in un-adopted positions in connection with other properties to be exposed to public scrutiny. It is important to avoid public resources being unnecessarily expended in explaining the reason for interim positions, and/or why particular options were not subsequently chosen.

It was decided the above prejudicial effects would be relevant to the “would be likely to” limbs of section 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c). After due consideration, the Qualified Person was in agreement that the exemption was engaged.

Stage 2

Section 36 is a public interest tested exemption. This means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

The Welsh Government acknowledges the inherent public interest in the openness and transparency that release of the information would engender. It would also demonstrate that Government officials and Ministers are fully exploring all possible avenues so that decisions are based on sound evidence.

Guidance from the Information Commissioner’s Office states that “information may be exempt under section 36(2)(b)(i) or (ii) if its disclosure would, or would be likely to inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The rationale for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision making by the public authority”. The section 36(2)(c) exemption can be applied if releasing the information would *otherwise* prejudice, or would be likely to *otherwise* prejudice, the effective conduct of public affairs, and is about the process that may be inhibited, rather than what is in the information.

Section 36(2)(b)(i) - free and frank provision of advice

We are heavily reliant on Government Officials and appointed advisors being able to provide advice and exchange views in an open and frank way, exploring various options as part of the normal working process. This provides the Welsh Government with the space and freedom to hold such discussions in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than necessary.

It is in the interest of good governance to produce the best advice available. The role of the property advisor is to thoroughly consider options and risks and to offer advice. To fully explore options, advisors and Officials must be engaged to speak and debate freely. Some individuals would be less likely to get involved if they thought their advice would be revealed, and this outcome would be likely to lead to a less strenuous and in depth exploration of options and potentially less robust and effective recommendations. This would not be in the public interest.

Section 36(2)(b)(ii) - *inhibiting the free and frank exchange of views for the purposes of deliberation*

The information captured by this request forms part of the necessary processes of exchanging views for the purposes of deliberation. If the information were to be disclosed, it is believed that future discussions would be less candid, would be likely to lead to less rigorous and in-depth exploration of options and this in turn would harm our deliberations resulting in less robust and effective outcomes. This would not be in the public interest as these views, opinions and experiences are essential in the development of advice to Ministers. In order to arrive at the best possible recommendations, Officials and advisors will consider a variety of options in a free and frank exchange of views and experiences and will discuss all potential options without fear of disclosure. If believed that their deliberations would be disclosed then it is considered that discussions would be likely to be inhibited, making them less candid and robust. It is considered that disclosure would act against the public interest by limiting the free and frank exchange of views for the purposes of deliberation which is required if Government is to fully understand an issue thus make informed decisions.

Section 36(2)(c) - *otherwise prejudice the effective conduct of public affairs*

As stated above, Mr Goldstone was appointed to provide property advice to the Department for Economy, Science and Transport. The captured information relates to advice that he has provided in this regard. It is important to secure the willingness of such advisers to fully engage away from the public gaze i.e. there should be no disincentive to contributing views and sharing intelligence. Unless such advisers are able to engage in this way, then the effectiveness of their appointment would likely be undermined. It is considered that disclosure would act against the public interest as it would be likely to prejudice the effective conduct of public affairs because advisors would, in the future, be less willing to engage and be more inhibited in what they say, and this would undermine the appointment process.

Accordingly, the information requested has been withheld under Section 36(2)(b)(i), Section 36(2)(b)(ii) and Section 36(2)(c) of the Freedom of Information Act for the reasons set out above.