



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 9876

Date: 17 February 2016

Dear ,

Request for Information – ATISN 9876

Further to your request for information by email on 22 October 2015, the Welsh Government has considered the request and this letter represents the response of the Welsh Government.

I confirm that we hold information that is captured by this request; one audit report has been issued relating to the National Procurement Service. After due consideration, however, the Welsh Government has concluded that the report is exempt from release under the following exemption:

Section 36 - Prejudice to the effective conduct of public affairs

Our full reasoning for applying these exemptions is given at Annex 1 to this letter.

If you believe that I have not followed the relevant laws, or you are unhappy with this response, you may request an internal review by writing to:

Mr David Richards
Director of Governance
Welsh Government
Cathays Park
Cardiff

When dealing with any concerns, I will follow the principles set out in the Welsh Government's Code of Practice on Complaints which is available on the Internet at www.wales.gov.uk or by post.



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

CentralDepartments-FOI/DP@wales.gsi.gov.uk
Gwefan • website: www.cymru.gov.uk

You also have the right to complain to the Information Commissioner. Normally, however, you should pursue the matter through our internal procedure before you complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request then you may make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales,
Ffordd yr Hen Gae, Pencoed, Bridgend, CF35 5LJ

Yours sincerely

ANNEX 1

Section 36 Prejudice to the effective conduct of public affairs

Section 36 is a set of public interest tested exemptions. This means that, in order to withhold information under them, I must show that the public interest in withholding is greater than the public interest in releasing it.

Public interest arguments in favour of release

In principle, the public interest would be served in disclosing information which demonstrates transparency in the way in which government operates, particularly in terms of efficiency, effectiveness and in holding spending departments to account. The prospect of disclosure may also serve to focus delivery and heightens the need for demonstrable evidence of effectiveness and efficiency, possibly leading to fuller and franker submissions to auditors.

Public interest arguments in favour of withholding Section 36 - Prejudice to the effective conduct of public affairs

This states (inter alia):

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act:

(b) would, or would be likely to, inhibit— .

(i) the free and frank provision of advice, or.

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

We believe this exemption is applicable to the Internal Audit Report on the Welsh Government National Procurement Service. This report includes in it the opinion of Internal Audit Services (IAS) on the systems, procedures and arrangements audited.

In order for internal audit to be effective in its objectives, the internal audit process should not be undermined. The effectiveness of the process depends upon:

- the willingness of auditees to engage fully and support the audit process (there should be no disincentive to undertaking an audit);
- the timeliness of the process (there is benefit to the early identification and remedy of weaknesses and correction of errors);
- the full contribution of all those involved in the process. To this end, auditors need to be unrestrained, frank and candid to be effective.

The disclosure of information relating to the audit would have an inhibiting effect upon all three elements above. In particular, it is likely that individuals involved in the audit process will be less frank and candid in their contributions to any future audits. This, in turn, could have a negative impact on the integrity and effectiveness of the audit process.

The concern is that, should the report become available beyond its intended internal circulation, management will be less likely to seek audit advice regarding areas of concern and the removal of this “secure environment” for the provision of advice and exchange of views would mean that future audits of NPS would become less robust. Damage to the robustness of the audit process is particularly relevant in the case of a key support service like the NPS which operates across the whole of the Welsh Government and which has a fundamental impact on the Welsh Government’s ability to achieve value for money in the use of public monies.

The above comments notwithstanding, then in terms of the specific limbs of the section 36 exemption, the following instances of harm can be identified:

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

In terms of the audit process, those involved must contribute fully. To this end, assessments by internal auditors need to be unrestrained, frank and candid to be effective. Unless those involved in the process are able to engage in unrestrained, frank and candid dialogue in the provision of advice surrounding possible control issues, the effectiveness of the audit process would be undermined. This would ultimately contribute to a less effective audit process and the potential loss of value anticipated from audit engagements as prescribed in international audit standards. We believe that release of the internal audit report on the NPS would mean those involved in the audit process would be less willing to engage in unrestrained, frank and candid dialogue, which inhibits the ability of internal auditors to engage in the free and frank provision of advice to NPS management to assist them to address control issues, should they arise, and secure business process improvements. Such inhibition would not be in the public interest.

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

Throughout the audit process, it is important to secure the willingness of senior managers to fully engage and support the process (i.e. there should be no disincentive to undertaking an internal audit in a particular area). Unless those involved in the process are able to engage in unrestrained, frank and candid dialogue and views surrounding possible control issues, the effectiveness of the audit process would be undermined. Any inhibitions regarding this free and frank exchange of views would ultimately contribute to a less effective audit process and the potential loss of value anticipated from audit engagements as prescribed in international audit standards. We do not believe this would be in the public interest.

In the specific case of the requested NPS report, NPS provides the potential for Welsh Government to make material savings in expenditure through more effective and efficient procurement of the goods and services that it requires to deliver its objectives. NPS also delivers a critical element of the compliance regime that enables the Welsh Government to adhere to EC Public Procurement Regulations. Failure to comply with these Regulations can have significant financial consequences in the form of penalties from the Commission and compensation payments to unsuccessful bidders for NPS contracts. These objectives would be undermined if the exchange of views between auditors and management in the course of audits of NPS were not completely free and frank.

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

It is in the interest of good government that the civil service has a robust internal audit process. This is one of the main ways to ensure objective evaluations are made of Government processes. There is a clear public interest in ensuring the satisfactoriness of that process is not undermined. The prospect of disclosure of internal audit information into the public domain would be likely to have a negative and inhibiting impact on the audit process; in particular, the openness of the contribution of all involved. This could, in turn, impact on the reliability of the internal audit process. The prospect of disclosure might also have an impact on the timeliness of the process; early completion of the process is beneficial to ensure that weaknesses are addressed and remedied at the earliest opportunity. We believe that release of the internal audit report on the NPS would be likely to prejudice the timeliness and efficiency of the audit process in future and this would not be in the public interest.