



Ein cyf/Our ref ATISN 10176

7 March, 2016

Dear ,

Request for Information – ATISN 10176

I wrote to you on 12 February regarding your request. You asked for information relating to the activities of Visit Wales as specified in your email of 8 February, and as detailed in my letter to you of 12 February. I can confirm that we hold some information relating to your request.

The total current total cost to the tax payer for Geldards work regarding this dispute from 1st July 2014 to 8th February 2016 is £138,402 + VAT (copies of invoices held have been enclosed) . We do not hold any information relating to expected, budgeted or projected costs for Geldards services. The information relating to 1(c) is exempt from disclosure under section 21 of the Freedom of Information Act (FoIA) - information accessible to the applicant by other means. Please use the following link - <http://gov.wales/about/cabinet/decisions/?lang=en> .

In relation to question 1(d), I am interpreting “documents, minutes or meeting notes or other evidence relating to the above” requested as relating to Part 1 – i.e. information held which relates to the instruction between the Welsh Government and Geldards LLP “to advise on the dispute between it and Pablo Star Ltd and Pablo Star Media Ltd”. I can confirm that the Welsh Government holds information of this description; however, I have concluded that it is exempt from disclosure under Section 42 of the FoIA – Legal Professional Privilege. Full reasoning for applying this exemption can be seen at Annex 1 of this letter.

Judy Hsieh from HIL International Lawyers & Advisers was appointed on 04/11/2015 to represent the Welsh Government in Holland at a cost to date of 35,492 Euro (copies of invoices held have been enclosed) . We do not hold any information relating to expected, budgeted or projected costs.

Robin Hayes from Whitney Moore Solicitors was appointed on 17/08/2015 to represent the Welsh Government in Ireland at a cost to date of £10,626.86 (copies of invoices held have been enclosed). We do not hold any information relating to expected, budgeted or projected costs. In relation to question 3(f) of your request, whilst not wishing to confirm or deny whether the Welsh Government holds information of this



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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 .

description, if we did we would it would be exempt from release under Section 40 of the FOIA – Personal data. Full reasoning for applying this exemption can be seen at Annex 1.

Richard Oparil from Porzio, Bromberg & Newman was appointed on 04/03/2015 to represent the Welsh Government in America at a cost to date of \$91,960.95 (copies of invoices held have been enclosed). We do not hold any information relating to expected, budgeted or projected costs. In relation to question 4(f), I can confirm that the Welsh Government does not hold any information of this description; the Welsh Government is not, either directly or indirectly, paying the American legal bills for any other party (other than the Welsh Government) in any matter in America.

In relation to 5(a)(i) I can confirm that the Welsh Government holds information of this description. However, I have concluded that it is exempt from disclosure under Section 42 of the FOIA – Legal Professional Privilege. Full reasoning for applying this exemption can be seen at Annex 1. The names and positions of those involved in the communications relating to 5(a)(i) are as follows: Patricia Clarke, Head of Commercial Legal Services team, Michael Clarke, Deputy Director of Legal Services, Jeff Godfrey, Director of Legal Services and on the Welsh Government's behalf, Michael Lindsey, Geldards LLP. Julian Evans, Director of Protocol approved the FCO's official position.

In relation to 5(b)(i) the first contact from the lead Department at the Foreign & Commonwealth Office was received on 29 May 2015. The names and positions of those making or receiving such contact are as above answer 5(a)(ii). Details and copies of all such contact between those parties are exempt from disclosure under Section 42 of the FOIA – Legal Professional Privilege. Full reasoning for applying this exemption can be seen at Annex 1.

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.

The request you sent me contains personal information about you - for example, your name and email address. I will only use this personal information in accordance with the Data Protection Act 1998 to deal with your request and any matters which arise as a result of it. I will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <http://wales.gov.uk/about/foi/responses/?lang=en>).

Yours sincerely

Tara Croxton
Major Events Unit

Section 42 – Legal Professional Privilege.

This exemption states (inter alia):

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the “dominant” (main) purpose of litigation. The information in question concerns confidential communications made for the purpose of providing or obtaining legal advice or for lawyers to use in preparing a case for litigation.

The section 42 exemption is qualified, which means that it is subject to a public interest test. That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission and DTI* [EA/2005/0023] in which the tribunal, on the subject of LPP said:

"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...".

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK Government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege.

Moreover, disclosure of legal advice has a significant potential to prejudice the governments' ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the

reliance it can place on the advice having been fully considered and presented without fear or favour.

Section 40 – Personal data

Section 40(2) provides an exemption for information which is the personal data of a third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 (DPA). In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal data as:

...data which relate to a living individual who can be identified

- a) *from those data, or*
- b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any person in respect of the individual.

Section 40(5)(b)(i) provides an exception to the duty to confirm or deny whether personal data is held in situations where to do so would in itself contravene one of the data protection principles. I consider that if information were held in relation to question 3 (f), it would amount to personal data which would enable individuals to be identified. Further, I consider that confirmation of the existence of such personal data would, in this context, also likely lead to the identification individuals and a breach of one of the data protection principles, in particular the first. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office ('The exemption for personal information' - v4 March 2011) states:

"Disclosure must therefore be fair, lawful and meet one of the relevant DPA Schedule conditions. We suggest that the starting point is to consider whether the disclosure of personal information is fair. Where the conclusion is that the disclosure would be unfair, and so in breach of the first principle, this would be the end of the matter and the information would not be disclosed."

In this instance, I do not believe that, if such data were held, any individual who could be identifiable would have had any expectation that their personal data would be released into the public domain. To that end, I believe that release of some of the information would be unfair and so breach the first data protection principle. For that reason, part of 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 test.