



13 May 2016

Dear ,

Complaint in respect of request for Information – reference ATISN 10295

I refer to your complaint in respect of our response to your freedom of information request dated 18 March and your further request for an internal review following our response of 11 April.

You asked for:

The Strategic Outline Case (SOC), Outline Business Case (OBC), Full Business Case (FBC) and grant award letter for the new Welsh medium 3-18 school in Ystalyfera; a Neath Port Talbot County Borough Council (NPT CBC) 21st Century School project.

I can confirm that there was no SOC for this project. The remaining information requested was provided to you in our response of 11 April, albeit with certain financial information redacted under section 43(2) of the Freedom of Information Act 2000 (FOIA). You were dissatisfied with this decision and asked for an internal review.

I have conducted the review and am satisfied that the decision taken to withhold the financial information was correct for the reasons set out in the original response letter. It's important to note that requests under the FOIA are treated as applicant and motive blind and any releases are made to the 'world at large'. To that end, the personal interests or motives of the requester in making their request is irrelevant, and the 'public interest' test is conducted with a view to disclosure to the world at large. I would also like to reiterate that in order to satisfy the public interest test in relation to the exemption it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to outweigh the public interest arguments in favour of release.

The decision to withhold the details of the estimated costs was taken following consultation with Neath Port Talbot County Borough Council. On reviewing the information, I concur with the view that to release details of the estimated cost, and thus the amount of money put aside, for the project would be likely to result in prejudice to the local authorities commercial interests. By making public the estimated cost of the project prospective bidders would be likely to submit bids at, or close to that figure,



rather than at a more competitive level. This would result in the local authority having to accept a bid that would have been likely to be lower, if those bidding for contract were not aware of the amount set aside. Although cost is only one aspect of bids that is taken into consideration when awarding tenders, it is an important consideration particularly when looking to obtain the best value for money. As such I am content that disclosure of this information at this point in time does engage the s34(2) "commercial interests" exemption.

I note the points you have raised as to why you believe it is in the wider public interest that the information should be released, not withstanding any prejudice that would be likely to occur. In summary these were:

- No other published SOC has such information withheld;
- NPT CBC Website shows that c£22M has been earmarked for projects linked to Welsh Medium Education in this county;
- That potential bidders for contracts will, thus, be aware of the amounts sets aside and will target their bids accordingly;
- The information relates to a building project that has already commenced; and,
- Disclosure would allow for full transparent comparisons to be made between the new 3-18 Ystalyfera Welsh Medium School and the OBC and FBC submitted and approved for the WM 21st Century New Build Project at Ystalyfera and the 21st Century Schools project for a Catholic Faith School in Neath Port Talbot.

Taking these in turn;

- *No other published SOC has such information withheld*

A SOC is a document which looks at a strategic case for change and a long list of options. At this stage, project costs are generally not sufficiently detailed to be considered commercial in confidence. Therefore it would not be unusual for a SOC to be published without redaction.

At the later stages of OBC and FBC, this information is greatly refined and could be commercially sensitive, dependent on the stage of the procurement process.

In terms of the documents found online, if procurement has concluded at the time of any Freedom of Information request, then it is likely that documents at the OBC and FBC stages have been released with no redactions. However, in this case, procurement for the Phase Two works has not yet concluded. As a result, this information has not been released due to reasons of commercial sensitivity

- *NPT CBC Website shows that c£22M has been earmarked for projects linked to Welsh Medium Education in this county;*
- *That potential bidders for contracts will, thus, be aware of the amounts sets aside and will target their bids accordingly;*

The figures quoted on the school website are not precise. As stated above, the more refined figures are provided in OBC and FBC. These are not published proactively until such time as contracts have been awarded to ensure that local authorities have the best chance of obtaining value for money for those contracts.

- *The information relates to a building project that has already commenced*

This project has adopted a phased approach to delivery due to confined site conditions. Procurement will take place for each of the two phases of work. The first phase has been procured and the contract let. The local authority intends to procure the second phase of the project over the next few months with a scheduled start date of March 2017 and completion by May 2018 for a September 2018 occupation.

In view of the close proximity of the procurement exercise it does not make sound commercial sense to release the information at this stage in the process. The local authority is concerned that should details of estimated capital costs be released into the public domain, the private sector may use this information to their commercial advantage. This may lead to uncompetitive tenders, which attracts potential commercial risk to both the Welsh Government and the local authority.

Although the contract for the first phase of work has been let, release of financial details of the first phase would make it possible to extrapolate financial details of the second phase.

- *Disclosure would allow for full transparent comparisons to be made between projects*

We issued a redacted version of a SOC for a new faith school in Neath Port Talbot on 3 March 2015 under FOI ATISN 9175. Information has been disclosed for other projects where the procurement stage has passed. However, as it is very important that value for money is secured in all projects involving investment of public funds, we consider that it is not an appropriate time in the process to release unredacted information in this case. An effective competitive tendering could be prejudiced if this financial information was disclosed

In summary, I believe that, at this point in time, that the public interest weighs in favour of applying the s43(2) exemption until such time as the contracts for this project have been awarded. As such I uphold the original decision to withhold the financial information from the information released in response to your request.

I note that you have referred to Freedom of Information request ATISN10363 as a second reason for an internal review. I understand that the response to this request was issued on 10 May, therefore I have not responded to the issues you raise in relation to this request in this letter .

I have considered your complaint in accordance with the procedure outlined in the Welsh Government's Practical Guide for Making Requests for Information which is available by post on request or via the internet.

If you remain dissatisfied with this response you 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

Your correspondence also raised a number of additional general points which I address below:

- *Why was there no SOC submitted for this project?*

The vast majority of projects would have a SOC, which is produced during the early stages of project development. In this case, the project had already been sufficiently developed for an Outline Business Case (OBC) to be brought forward. Because of this, it was agreed that the local authority would not have to submit a SOC.

- *NPTCBC are responsible for controlling their own procurement procedures and it is their responsibility to ensure that public funds are spent in an appropriate, transparent and accountable manner. They must ensure that they follow the rules and regulations expected of them by adhering to both the WG and their own procurement policies and not to award contracts which are not in the public interest. I am confident that this is the practice that they and all local authorities adopt when carrying out their public duty.*

I note your point that Neath Port Talbot County Borough Council is responsible for its procurement procedures. This is why we consulted them on the risk of releasing financial information into the public domain. It was considered that as the second phase of the contract had yet to be procured, some financial information was redacted on the basis of commercial sensitivity

Yours sincerely