



Ein cyf/our ref ATISN 10249

13 June 2016

Dear ,

Request for Information – ATISN 10249

I wrote to you on 2 March regarding your request for information. Apologies for the delay in responding to your request. You requested information regarding the Llan Valley Industries Project (LVIP) plan. Specifically:

1. Meeting notes and emails between Officers in connection with the appraisal of the LVIP plan submitted.
2. Basis of the decision to refuse support for the plan.
3. The economic analysis and rationale of the decision to scrap the line on or around March 12th.

Whilst I can confirm that the Welsh Government holds information of this description, I have concluded that the information held by Welsh Government 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 these exemptions is given at Annex A.

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

ATISN 10227 – 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 is the Welsh Ministers or the Counsel General to the Welsh Assembly Government. 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.

The information withheld under these exemptions captures the provision of advice and exchanges of views that explore various options as part of the normal working process. There is an expectation that there is a 'safe space' in which Welsh Government can hold these discussions; it is important that officials are able to fully engage with each other and provide advice and exchange views away from the public gaze and that there should be no disincentive in doing so. If officials believed their advice or their deliberations would be made public, it is likely they would, in the future, be more inhibited in what they say and be less willing to engage in free and frank exchange of views, leading to less rigorous and in-depth exploration of options.

It is normal practice for officials to provide advice and exchange views in an open and frank way, and exploring various options as part of the process of deliberation. 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

When a company approaches the Welsh Government seeking support, officials involved with account management of businesses follow a set process, an accepted and embedded practice within the Welsh Government that has been derived from experience on handling general business enquiries. They use resource tools to assist them in determining whether funding can be offered, including an on-line internal Customer Relationship Management (CRM) tool. The CRM tool captures core

information about the business that is seeking advice and support including contact information, a description of the type of company and its purpose, a risk profile, priority level, project details (such as start and end date), which sector it falls within, the business location, the amount and type of funding required, value for money assessments and State Aid considerations, due diligence, credit and other financial checks and assessment of a business plan. In this particular case, the company had made several applications previously which resulted in investments being made. However, the business plan, against which these investments were made, was not successful and the company was currently in administration. The Welsh Government is a principal creditor and consequently has an interest in identifying a buyer for the company in order to recoup its investments. Officials met with the applicant to understand whether there was any prospect of an immediate investor who would create jobs as a result of this application.

Unless officials are able to follow the process of considering options and advice surrounding the possible offer of support to any company, the effectiveness of the possible support that could be offered and the process of reaching such a decision would be undermined. This in turn, would be likely to prejudice the effective conduct of public affairs. Release of the information would also result in un-adopted positions in connection with the options under consideration being 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.

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.

It is also important to note that, regardless of the particular interests of the requestor, requests under the Freedom of Information Act are treated as ‘applicant blind’ and any release is made to the world at large. With that in mind, 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

business support decisions are based on sound evidence. However, there are a number of public arguments against release of this information and they are set out below.

Section 36(2)(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

We are heavily reliant on Government officials 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 and provide advice in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than necessary.

The withheld information relates to the exchange of views and provision of advice by consultants and Officials, Officials to Officials or by Officials to the Minister for Economy Science and Transport, and the exchange of views between Officials and the subsequent sharing of that dialogue with the Minister for Economy, Science and Transport, regarding options for supporting Kancoat at the Alcoa Site. The correspondence includes emails between Officers in connection with the appraisal of the LVIP plan, including the basis of the decision to refuse support for the plan. Also captured in the email are discussions, the economic analysis and rationale of the decision to scrap the line on or around 12 March.

It is in the interest of good governance to produce the best advice available for Ministers. To fully explore all options, officials must be able to speak and debate freely. Officials would be less likely to fully engage in the provision of advice or in exchanging views if they thought their free and frank deliberations and 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. To that end, the information has been withheld under section 36(2)(b)(i) and (ii). The Welsh Government believes that the 'would be likely to' provision of the exemption is applicable.

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

The withheld information was generated through the Welsh Government processes described above when considering options for providing a company with support. Detailed information about the business that is seeking advice and support has been requested and supplied. Information captured by the request relates to the process of determining whether the project is considered viable and sits within Welsh Government priorities and ability to support, and it is agreed between officials that there is an in-principle case for support, a more structured process is then followed whereby the company is asked to submit an application for funding.

Officials believe that release of this information would be likely to prejudice the process described above undertaken by officials in determining whether or not support is a viable option, because it would be likely that businesses would be less willing to provide the necessary amount of detail required when following the set process for

assessing future business support requests, resulting in the failure of the necessary processes. It would also result in un-adopted positions in connection with the options under consideration being exposed to public scrutiny.

Unless officials are able to provide options and advice surrounding the possible offer of support to any company, the effectiveness of the possible support that could be offered and the process of reaching such a decision would be undermined. This in turn, would be likely to prejudice the effective conduct of public affairs.

Also, it is important to avoid public resources being unnecessarily expended in explaining to the public reasons for interim positions, and/or why particular options were not subsequently chosen.

It is important to avoid public resources being unnecessarily expended in responding to and defending the Welsh Government's position in relation to such information, which would not otherwise be published, together with the surrounding e-mail correspondence, which represents the personal views of one individual.

The withheld information relates to the exchange of views and provision of advice by consultants and Officials, Officials to Officials or by Officials to the Minister for Economy Science and Transport, and the exchange of views between Officials and the subsequent sharing of that dialogue and advice with the Minister for Economy, Science and Transport, regarding options for supporting Kancoat at the Alcoa Site. It also includes the sharing of some of these discussions with other Ministers and Assembly Members.

The correspondence also includes emails between Officers in connection with the appraisal of the LVIP plan, including the basis of the decision to refuse support for the plan. Also captured in the email are discussions, the economic analysis and rationale of the decision to scrap the line on or around 12 March.

The release of this information would be likely to prejudice the process of handling government business. Unless officials able to provide and consider options and advice the effectiveness of the possible support that could be offered and the process of handling government business would be undermined. This in turn, would be likely to prejudice the effective conduct of public affairs.

Accordingly, the information requested has also been withheld under Section 36(2)(c) of the Freedom of Information Act for the reasons set out above. The Welsh Government believes that the 'would be likely to' provision of the exemption is applicable.