



Llywodraeth Cymru
Welsh Government

16 June 2016

Dear ,

ATISN 10448

Thank you for your request which I received on 18 May. You asked for:

- Copies of all correspondence during the period 1 September 2013 and present (including emails and notes of telephone conversations) between WEFO and Pembrokeshire County Council regarding the Pembroke and Pembroke Dock Commercial Property Grant scheme.

I have decided that most of the information described in the enclosed list is exempt from disclosure under section 40 (2) "personal information" and section 31(1) (a) "prevention or detection of crime" of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A to this letter.

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



Swyddfa Caerfyrddin/Carmarthen Office
Heol Picton/Picton Terrace
Caerfyrddin/Carmarthen
SA31 3BT

Ffôn/Tel:
E-Bost/E-Mail

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

Annex A

I have decided to withhold the following information:

Doc	Information being withheld	Section number and exemption name
1	21/02/14: Email – WEFO to PCC re CPGS scheme	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
2	04/04/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
3	07/04/14: Email – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
4	10/04/16: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
5	11/04/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
6	25/04/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
7	12/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
8	13/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
9	16/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
10	20/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
11	22/05/14: Email – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
12	23/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
13	27/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
14	28/05/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
15	02/06/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement:

Doc	Information being withheld	Section number and exemption name
		the prevention or detection of crime
16	03/06/14: Email – WEFO to PCC re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
17	10/06/14: Email – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
18	10/06/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
19	12/06/14: Email – WEFO to PCC re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
20	13/06/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
21	04/07/14: Email – PCC to WEFO re repayment issues	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
22	07/07/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
23	08/07/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
24	12/07/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
25	15/07/14: Email – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
26	18/07/14: Email – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
27	21/07/14: Email – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
28	23/07/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
29	24/07/14: Email – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
30	25/07/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
31	25/07/14: Email – PCC to WEFO re	information is withheld under:

Doc	Information being withheld	Section number and exemption name
	WEFO investigation	section 31 (1) (a) – law enforcement: the prevention or detection of crime
32	29/07/14: Letter – WEFO to PCC re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
33	29/07/14: Email – WEFO to PCC re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
34	29/07/14: Email – WEFO to PCC re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
35	31/07/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
36	01/08/14: Letter – WEFO to PCC re EU grant payment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
37	04/08/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
38	12/08/14: Email – WEFO to PCC re EU grant payment letter	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
39	13/08/14: Letter – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
40	15/08/14: Letter – PCC to WEFO re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
41	18/08/14: Email – PCC to WEFO re scheme procedures	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
42	22/08/14: Letter – WEFO to PCC re WEFO investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
43	04/09/14: Email – PCC to WEFO re CPGS scheme	Some information is redacted under: section 40(2) – Personal data exempt from disclosure
44	08/09/14: Email – PCC to WEFO re ineligible expenditure / repayment	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
45	09/09/14: Email – PCC to WEFO re eligibility issues	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
46	18/09/14: Email – WEFO to PCC re ineligible expenditure / repayment and EU grant payment letter	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime

Doc	Information being withheld	Section number and exemption name
47	23/09/14: Email – PCC to WEFO re enquiry on the CPGS scheme	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
48	21/10/14: Email – PCC to WEFO re CPGS scheme	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
49	29/10/14: Email – PCC to WEFO re CPGS scheme	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
50	30/10/14: Email – PCC to WEFO re CPGS scheme	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
51	03/11/14: Email – PCC to WEFO re CPGS scheme	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime
52	15/12/14: Email – WEFO to PCC re police investigation	information is withheld under: section 31 (1) (a) – law enforcement: the prevention or detection of crime

This Annex sets out the reasons for the engagement of section 40 (2) and section 31(1) (a) of the FOIA and subsequent consideration of the Public Interest Test.

Engagement of section 31 (1) (a) law enforcement: the prevention or detection of crime

The Welsh Government believes that copies of the correspondence you have requested between WEFO and Pembrokeshire County Council regarding the Pembroke and Pembroke Dock Commercial Property Grant Scheme should be exempt from disclosure.

Having carefully considered your request and consulted with third parties, I have concluded that the information is exempt under Section 31(1) (a) of the FOIA as the information is linked to an active police investigation.

This exemption is a qualified exemption, which means that it is subject to a prejudice test and public interest test.

Section 31 (1) (a) – Prejudicial to the prevention and detection of crime

The intention behind this exemption is to prevent the disclosure of information if disclosing this information would or would be likely to prejudice the prevention or detection of crime.

The information I consider exempt from disclosure includes the findings of a WEFO investigation into the Pembroke and Pembroke Dock Commercial Property Grant Scheme that was completed in 2014 and details of potential irregularities, ineligible expenditure and repayment of EU grant relating to this scheme.

Whilst I understand that EU funds are not involved in the ongoing investigation by Dyfed Powys Police into this scheme, releasing the findings of WEFO's investigation would be likely

to prejudice the detection of crime because it would place sensitive information that is linked to an active police investigation into the public domain.

I do not know what evidence will be used by Dyfed Powys Police in their ongoing investigation, and so, at this stage of the investigation, releasing this information would be likely to complicate or jeopardise the detection of crime and impact Dyfed Powys Police's ability to complete their active investigation. Releasing this information would also be likely to prejudice any potential future prosecutions / convictions as this case progresses through the criminal justice system.

Public Interest Test

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.

I have therefore assessed whether release of the information would or would be likely to prejudice the active investigation being undertaken by Dyfed Powys Police.

Public interest arguments in favour of disclosure

- Assist the public's understanding of the decisions taken by WEFO to protect and maximise EU funds for the benefit of Wales.
- Information is already in the public domain that Dyfed Powys Police are conducting an investigation into allegations of fraud relating to this scheme.
- There is a public interest in recognising the importance of the proper conduct and processes and procedures carried out by public authorities, particularly those which might lead to criminal proceedings.

Public interest arguments in favour of withholding

- Alleged fraud can take a long time to investigate fully to identify whether or not any crime has been committed, the extent of that crime and the perpetrators of that crime. In order to ensure that such forensic investigations are thorough, it is not unusual for such investigations to take a number of years. Whilst there is a public interest in knowing the outcome of these investigations, the wider public interest is best served by ensuring those carrying out the investigation are able to complete the task as thoroughly as possible. It is in the public interest that any such crime is identified and those responsible are brought to trial.
- Disclosure of information relating to the investigation may suggest a certain outcome, or may suggest certain individuals were involved or responsible, where, in reality, after consideration of all available information a different outcome would be reached. This would lead to greater confusion as to what the exact conclusions were and how they were reached.

- It is not in the public interest to place into the public domain information which could see individuals being targeted as being involved when their role may have been completely innocent.

Balance of public interest test

I have concluded that until the police investigations and any possible future prosecutions are completed, the public interest arguments identified for non-disclosure outweighs that in favour of release.

Section 40(2) - Personal data exempt from disclosure

After consideration of section 40 of the Freedom of Information Act, I have redacted the names of Welsh European Funding Office officials (staff below Deputy Director level) and names of third parties.

Section 40(2) of FOIA requires third party personal data to be withheld in circumstances where its disclosure would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (DPA).

I consider that disclosure of this personal data would breach the first data protection principle. The first data protection principle requires that processing of personal data must be fair and lawful and, in particular, that it should not be processed unless one of the conditions set out in Schedule 2 of the DPA is met.

In determining whether disclosure would contravene the first data protection principle, I have considered whether disclosure would amount to fair and lawful processing of those individuals' personal data. I consider that those individuals would be under the reasonable expectation that their information would remain confidential and not disclosed to the public at large. As such, I do not consider that disclosure of the redacted personal data would be fair.

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v1.0) states:

"The public authority must decide.....whether it would be fair to disclose the personal data. If the public authority concludes that it would not be fair, then it must not disclose the information in response to the FOIA request".

In this instance, because the individuals would have had no expectation that their personal data would be released into the public domain, I believe that release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to public interest tests.