



6 September, 2016

Dear ,

Request for Information – ATISN 10643

I wrote to you on 9 August regarding your request for information. You asked for information relating to the activities of Visit Wales and the Welsh Ministers themselves. I can confirm that we hold some information relating to your request:

1. The current cost to the tax payer for Geldards' work regarding this dispute for the period since your last request for this information, so from 9 February to 8 August 2016, is £109,732 + VAT. Copies of invoices held have been enclosed. We do not hold any information relating to expected, budgeted or projected costs for Geldards' services in this matter. The information relating to 1 (c) is exempt from disclosure under section 21 of the Freedom of Information (FOIA) – information available to the applicant by other means. Please use the following link:
<http://gov.wales/about/foi/responses/2016/?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 Question 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 found at Annex 1 of this letter.
2. The date that Geldards was instructed in this matter was 26 February 2015. The date that the decision for The Welsh Ministers to issue their application to be joined as the second defendant in the matter before the Companies Court was made on 18 November 2015 by the First Minister of Wales. The information relating to 2 (c) is exempt from disclosure under section 21 of the Freedom of Information (FOIA) – information available to the applicant by other means. Please use the following link:
<http://gov.wales/about/foi/responses/2016/?lang=en>. In relation to question 2(d), I am interpreting "documents, minutes or meeting notes or other evidence relating to



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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.

the above” requested as relating to Question 2 – i.e. information held which relates to the instruction between the Welsh Government and Geldards LLP “to advise on a matter in the Companies Court London involving Mr Haydn Price and Pablo Star 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 found at Annex 1 of this letter. The total current cost to the tax payer for Geldards’ work regarding this matter to 8 August 2016, is £59,302 + VAT. Copies of invoices held have been enclosed. We do not hold any information relating to expected, budgeted or projected costs for Geldards’ services in this matter.

3. The current cost to the tax payer for HIL International Lawyers & Advisors’ services regarding this dispute for the period since your last request for this information, so from 9 February to 8 August 2016 is 15,779.50 Euro. Copies of invoices held have been enclosed. We do not hold any information relating to expected, budgeted or projected costs for HIL International Lawyers & Advisors’ services in this matter.
4. The current cost to the tax payer for Whitney Moore Solicitors’ work regarding this dispute for the period since your last request for this information, so from 9 February to 8 August 2016, is £9,625.66. Copies of invoices held have been enclosed. We do not hold any information relating to expected, budgeted or projected costs for Whitney Moore Solicitors’ services in this matter. In relation to question 4(c) of your request, whilst not wishing to confirm or deny whether the Welsh Government holds information of this description, if we did it would be exempt from release under Section 40(2) of the FOIA – Personal data. Full reasoning for applying this exemption can be seen at Annex 1.
5. The current cost to the tax payer for Porzio, Bromberg & Newman’s work regarding this dispute for the period since your last request for this information, so from 9 February to 8 August 2016, is \$51,866.10. Copies of invoices held have been enclosed. We do not hold any information relating to expected, budgeted or projected costs for Porzio, Bromberg & Newman’s services in this matter. In relation to question 5(c), 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.

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

Annex 1

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(2)

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

We have concluded that, in this instance, if the information requested were held then it could contain third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that if the information were held, it would fall within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. 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 (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.
- If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

"The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA" (paragraph 63).

In this instance, we 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. Thus, we believe 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 the public interest tests.