



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 10843
Date: 9 November 2016

Dear ,

Request for Information – ATISN reference 10843

Thank you for your request which was received by the Welsh Government on 12 October 2016.
You asked for the following information:

- Please provide a list of all companies under investigation by the Welsh Government who have been in receipt of Welsh Government loans or grants;
- Please provide details of the reason for the investigations and outcome (if applicable)
- Please provide information for each of the last three financial years including the year to date.

Your request asks for details of “companies under investigation” but your request is not specific as to the type of investigation meant. The term “investigation” may be used by many Welsh Government officials in a wide range of capacities, to describe both formal and informal reviews or examinations of companies in receipt of loans or grant funding.

In the case of reviews or enquiries carried out *informally* which are referred to as “investigations”, I confirm that the Welsh Government does hold this information but does not hold it centrally. Complying with your request would exceed the appropriate cost limit given the significant amount of staff time and effort that would be required to identify and collate this information across the whole of the Welsh Government.

In the case of formal investigations undertaken in accordance with corporate protocols for this purpose, the types of “formal” or “official” investigation relevant to companies in receipt of Welsh Government loans and grants that might be carried out are:

- Investigations of complaints received through our formal Complaints Process;
- Investigations of allegations made by concerned individuals about the use of Welsh Government loans or grants received by a company. Such investigations are initiated and overseen by the Welsh Government External Assurance Panel;
- Investigations initiated by the Welsh Government Head of Counter-Fraud:
 - in response to a commission from the External Assurance Panel; or
 - on referral from the Auditor General for Wales; or
 - in response to concerns raised by Officials; or



- in response to concerns raised by individuals using the Counter-Fraud “hot line”.
- “Special investigations” carried out by the Internal Audit Service to explore matters of concern or establish the facts:
 - as directed by senior officials; or
 - to assist the Auditor General for Wales; or
 - in response to commissions from the External Assurance Panel; or
 - in support of the Head of Counter-Fraud.

With respect to *formal* investigations initiated during the period cited, from 1 April 2014 to date, I confirm we hold information that is captured by this request. However, after due consideration, I have concluded that the public interest in withholding the information requested outweighs that in releasing it. Accordingly, I have decided that the information requested is exempt from release under the following exemptions:

Section 21 - Information already reasonably accessible
 Section 31 - Prejudice to law enforcement
 Section 43 - Commercial interests

My full reasoning for applying these exemptions is given 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

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 1

Section 21 – Information reasonably accessible to the applicant by other means

Where information is already in the public domain there is no requirement for the Welsh Government to release the information requested. This applies in the cases of:

- the Police investigation into fraud perpetrated against the Welsh Government by two Directors of Padarn Bus Ltd;
- the Auditor General for Wales's review of the Welsh Government's funding of Kancoat Ltd;
- the Welsh Government investigation of grant funding provided to Kukd Ltd; and
- a Welsh Government review of grant funding provided to Griffin Place Communications Ltd

Section 31 – Prejudice to law enforcement

Section 31 is a prejudice based exemption and is also a qualified (subject to the public interest test). This means that not only does the information have to prejudice one of the purposes listed, but, in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it.

This Section states (inter alia):

31.—(1) Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice -
(b) the apprehension or prosecution of offenders,
(c) the administration of justice,

There have been a number of investigations of suspicions of fraud involving companies in receipt of grants and loans in the last three financial years including the current year. These investigations include matters that:

- are already in the public domain and, thus, are covered by Section 21 above;
- have been referred to the police and are the subject of ongoing police investigations; and
- are, currently, the subject of live Welsh Government investigations which may be referred to the Police.

There is a public interest in transparency and accountability around public funds that are lost through fraud against the Welsh Government and around administrative failings which allow the misuse or misappropriation of those funds. However, information about our investigations, the nature of those investigations and their outcomes when they relate to suspicions of criminal activity, are, by definition, important for the police in performing their own investigations to gather and assess evidence. Releasing the information requested would be likely to prejudice the detection of crime because it would place sensitive information that is linked to an active investigation into the public domain. I cannot know what evidence the police might use in their investigations and so, whilst investigations are ongoing, releasing this information would be likely to complicate or jeopardise the detection of crime and impact the police's ability to complete their active investigation.

Furthermore, the public interest in transparency and accountability is not served if it leads to the "tipping off" of companies, or the individuals accountable for them, so that the audit trail of evidence the Welsh Government and, subsequently, the police might otherwise rely on to bring a prosecution is destroyed or otherwise modified.

Releasing this information would also be likely to prejudice any potential future prosecutions or convictions as cases progress through the criminal justice system and may also be likely to prejudice the interests of fairness to any involved party. The public interest is more clearly served by access to information which is not disputed or subject to dispute and where individuals have not been denied the natural justice of a right to reply. Releasing information about companies, and the

individuals accountable for those companies, still subject to investigation might prejudice the interests of those companies and individuals whether or not any wrongdoing is, eventually, proven.

For this reason, the public interest is served when the Welsh Government can undertake investigations in confidence, with a reasonable expectation that investigations remain so until the investigative process has been concluded. Companies, and the individuals accountable for them, will have a similar expectation that the Welsh Government does not release information about investigations, particularly if suspicions are shown ultimately to be unfounded. The legal remedy which might be pursued by individuals and companies as a result of an unreasonable breach of this expectation might lead to significant loss to the public purse.

For these reasons, I believe to release the information requested at this stage would be likely to prejudice any investigation and also would be likely to prejudice the outcome of any trial which would not be in the interest of fairness and, therefore, the balance of the public interest therefore falls in favour of withholding the information.

Section 43 - Commercial interests

Section 43 is a public interest tested exemption. This means that, in order to withhold information I must show that the public interest in withholding information is greater than the public interest in releasing it.

This Section states (inter alia):

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

There is a public interest in transparency and accountability around the use and safeguarding of Welsh Government funds and the uses to which those funds are put to deliver benefits to the people of Wales. There is also a public interest in good investment decision-making by the Welsh Government, in upholding standards of integrity, in securing the best use of public resources and in safeguarding public funds that are invested in companies to support jobs and generate new ones.

However, in these cases, there is public interest in not damaging the commercial interests of the companies subject to investigation. In this case, the public interest suggests that information which might detract from the ability of commercial bodies to trade freely should be exempt from disclosure.

Taking these factors into account, overall I believe that disclosure of the information requested would be likely to prejudice the commercial interests of the companies involved. This prejudice arises in a number of ways.

Firstly, prejudice to the commercial interests of the companies under investigation arises from public knowledge of the fact that the organisations are in receipt of grant support or Welsh Government loan financing (regardless of the outcome of the investigation). Both situations would be likely to have a detrimental impact on the perception of the soundness and robustness of the finances of those companies and also on their financial standing and reputation within the business community as a suitable organisation with which to do business. Disclosure would be likely to be prejudicial to their commercial interests in that it would be likely to damage the confidence that commercial investors, partners, customers and suppliers have in the organisations identified. This will be so in the case of both grants and loans but particularly so in the case of loans, where the Welsh Government operates as “lender of last resort” to a company failing to secure financing from commercial sources.

Secondly, prejudice to the commercial interests of the relevant companies arises from public knowledge of the fact that concerns have been raised about their conduct, either by Welsh Government officials or by individuals external to the Welsh Government. This prejudice remains

even if the outcome of an investigation exonerates the companies in question as it casts doubt on their conduct. The organisations subject to investigation, whether or not they have been aware of that investigation, would have a reasonable expectation that the Welsh Government would not place information in the public domain that might affect their legitimate economic interests.

Thirdly, the public interest is served if the commercial interests of the companies investigated are protected and not prejudiced or undermined by the disclosure of information which is not common knowledge. It is in the public interest to encourage private individuals and organisations to have dealings with public bodies which are not a typical commercial transaction – such as obtaining grant funding or loan financing from a public authority – without fear of suffering commercially as a result of the disclosure of information relating to that transaction. In this case the public interest lies in protecting information of a commercial nature contained in Welsh Government records. It would not be possible to confirm which companies have been subject to investigation without disclosing the nature and extent of financial support that they have required from the Welsh Government.

On balance, therefore, I believe the public interest requires that this exemption is applied to all of the information requested as the commercial interests of the companies subject to investigations, of all types, may be impacted adversely by:

- the disclosure that the companies have been supported by a Welsh Government grant or loan; and
- the disclosure that the companies involved have been the subject of an investigation, the type of investigation carried out and the outcome of each investigation.