



28 February 2017

Dear ,

Request for Information – ATISN 10957

I wrote to you on 7 December regarding your request for information. You asked for:

- Copies of all correspondence between any Cabinet Members of the Welsh Government and Lord Kinnock in relation to Circuit of Wales and Heads of the Valleys Development Company Ltd dating from the Fourth Assembly to the present day (6 December 2016) of the Fifth Assembly.

I can confirm that we hold information relating to your request which is enclosed. . I have concluded, however that some of the information is exempt from disclosure under section 43(2), Commercial Interests, of the Freedom of Information Act 2000 (FOIA). Certain individual names are exempt from disclosure under section 40 – Personal Information of the Freedom of Information Act 2000 (FOIA). Full reasoning for applying these exemptions is provided 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:



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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.

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

ATISN 10957 – Application for Exemption

Section 43 (2) – Commercial Interests

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Section 43(2) of the FOIA. This states that information is exempt information if its disclosure under the FOIA would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a qualified (public interest tested) exemption. This means that 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. I have therefore given consideration to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

I recognise the general public interest in openness and transparency and that the release of the information would help the public gain a better understanding of the decisions made by Government. It is also recognised that there is a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

However, some of the information captured by the request includes information on the projects commercial position which include funding details, proposals, structures and scenarios which are unique to this project and is business sensitive information. All of this is current and commercially sensitive information and, if released, would be likely to prejudice the commercial interests of the company. Any disclosure would be prejudicial to their ability to undertake deals and negotiations with other third parties/future investors regarding future projects. I am satisfied that if this information was released into the public domain it would be likely to have a detrimental impact on the company and so be likely to prejudice their commercial interests.

Whilst this information may be of interest to competitors and potential future projects and partners, I do not believe that it would be of interest to the wider public. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest. Whilst I accept that, as a public body, the public will always have an interest in the work of the Welsh Government and that release of this information would engender our willingness to be open and transparent in the way that we work, I do not believe there is any pressing public interest in the release of this information.

I am aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information.

In conclusion, I believe that the balance of the public interest therefore falls in favour of withholding this information.

Section 40(2) – Personal Data

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).

We 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, in particular, that it should not be processed unless one of conditions set out in Schedule 2 of the DPA is met.

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