



Eich cyf/Your ref
Ein cyf/Our ref: ATISN 11224

2 June 2017

Dear ,

ATISN 11224: 21st Century Schools Band B Proposals – Neath Port Talbot College Group and Neath Port Talbot Local Authority

I wrote to you on 4 May regarding your request for information noting that it would take us longer than anticipated to respond to your request, and that I hoped to be in contact with you by 2 June. You asked for:

- 21st Century Schools Band B proposals for Neath Port Talbot County Borough Council - including any SOP and SOC's submitted to the Welsh Government; and
- any information (plans or proposals) for NPT College Group under Band B funding mechanisms.

Whilst I can confirm that the Welsh Government holds information of this description, I have concluded that the information held is exempt from disclosure under Sections 36 and 29 of the Freedom of Information Act 2000, specifically:

Section 36(2) (c) – otherwise prejudice the effective conduct of public affairs
Section 29(1)(b) - Financial Interests

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 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

ATISN 11224 – 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 Section 36(2)(c) is engaged for the following reasons:

Section 36 (2)(c) – *would be likely otherwise to prejudice the effective conduct of public affairs.*

The information in question does not constitute formal proposals. The information is an informal 'best guess' that has not been sanctioned at political or Board level. It will therefore be subject to further deliberation within the organisations concerned (and potential amendment) before being presented formally within a Strategic Outline Programme (SOP) for Band B of the 21st Century Schools and Education Programme. The information may not therefore provide a true or accurate reflection of the final picture/outcome. As such it could cause unnecessary confusion and anxiety because the potential "proposals" have not been the subject of consultation with the school or college communities that may be affected. Disclosure of the information would make it likely that stakeholders will not share such information with us informally in future. This would seriously inhibit our ability to plan future arrangements.

Stage 2

Section 36(2)(c) 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. We 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 we have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

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.

Section 36 (2)(c) - Public interest arguments in favour of disclosure

The Welsh Government recognises there is a public interest in releasing information around the potential plans of public bodies in relation to Band B of the 21st Century Schools and Education Programme. To release the information now would allow the public to see the types of projects that organisations are considering, increasing the level of transparency around this work. Further, by seeing what types of options are being considered the public would have the opportunity to challenge some of the proposals being formulated, increasing the level of accountability of public bodies as they progress their plans for Band B.

Section 36(2)(c) - Public interest arguments in favour of withholding

In order to appreciate the reasons why release of the information might “*otherwise prejudice the effective conduct of public affairs*”, it is necessary to understand the nature of the information held.

We have interpreted the word “proposals” in the original request in the broadest possible way in order to be as transparent as possible. It is fair to note however that the information we hold from Neath Port Talbot County Borough Council and the Neath Port Talbot College Group does not constitute proposals in the sense in which we would normally understand it. The Oxford English dictionary definition of “proposal” is: “a plan or suggestion, especially a formal or written one, put forward for consideration by others”. Similarly, the Collins English Dictionary has the definition as: “a plan or an idea, often a formal or written one, which is suggested for people to think about and decide upon.”

What we hold are not “proposals” in this sense – they are not formal, they do not constitute the definite confirmed intention of the bodies concerned and they do not require Welsh Government to decide upon them. In due course, our partners – local authorities and further education institutions – will be required to present their proposals for Band B to us, in the form of a Strategic Outline Programme (SOP). These SOPs for Band B will provide a much more robust and reliable picture of the organisations’ intentions and will be considered and decided upon by Welsh Government. In contrast, the information that we have received from partners thus far is not formal and is not for the purpose of decision.

In planning for Band B of the 21st Century Schools and Education Programme we required some basic “finger in the air” information from bodies that would be likely to seek funding from the Programme. This was to give us a broad national understanding of both potential demand for investment and affordability for our stakeholders, so that we could consider levels of Welsh

Government investment required and the most effective intervention rates. We asked for basic rough information from our partners on potential projects for Band B. What we wanted was an overall (i.e. national) sense of the potential requirements of our partners for Band B in order to enable us to begin to plan for Band B.

As the information requested was basic and untested, and to be used for planning only, we neither required nor expected absolute accuracy or certainty on possible individual proposals for Band B from our partners. What was vital, was an overall (i.e. national) conglomerated sense of the likely requests for funding for Band B and a general sense (again overall) of the likely ability of local authorities to be able to match fund projects dependent on a range of intervention rates.

We were aware that partners would not be able to provide information with any degree of certainty. Not least, because we were unable to confirm the grant intervention rates i.e. the extent that Welsh Government would match fund projects. But, also because possible proposals would not yet have been considered in full by the bodies concerned and not sanctioned at Board or Cabinet level. Given these uncertainties stakeholders were understandably reticent and concerned about providing the information requested but we reassured them by emphasising that:

- we only wanted the information for our own internal use;
- we only wanted them to do a “best guess” within the limitations and uncertainties that they faced; and that
- we would not be scrutinising or analysing individual projects – it was the overall national picture in which we were interested.

Given the above there are several related reasons why releasing the requested information would not be in the public interest.

1. Impact on future exchange of information

It is important for the effective conduct of public affairs that officials both within and outside of Welsh Government are able to fully engage with each other and share emerging information away from the public gaze and that there should be no disincentive to doing so. Removing the secure environment in which officials are able to share unconfirmed information of this sort would be likely to result in a reduction in the frankness of those involved in the process if they believed such information would be made public.

If officials in local government and further education institutions believed that such sensitive and potentially flawed information would be made public, they would be more inhibited in what they were willing to share with us, leading to less rigorous and in-depth exploration of options and an undermining of the effectiveness of our planning.

2. Impact of release of incomplete/draft information on work that is still under development and that has not yet been sanctioned

(a) The list of potential projects in the documentation has not been approved at Cabinet level nor has it been the subject of consultation with the respective education communities. As such, disclosure at this stage of information that does not carry the necessary official status would have a significant adverse impact on the organisations' ability to conduct open and meaningful discussions with schools and others directly and indirectly affected by the potential proposals.

(b) Releasing the information runs the significant risk of exposing sensitive development work being done by our partners to speculative publicity before there has been a chance to fully consider all the relevant issues. This could lead to the public challenging what are only initial considerations, helping to foster misconceptions, anxieties and false expectations over what form the final proposals will take. As a result, the real risk is that the ongoing developmental work being carried out by our partners will be undermined before it is even completed

(c) The information reflects potential plans that are still under development and consideration within the organisations concerned. No decisions have been taken and, as such, the outcome of these deliberations cannot be predicted. Premature disclosure may not give an accurate indication of the final outcome and may, in fact, be contrary to the public interest if it results in inaccurate or incomplete information being promulgated. In these circumstances disclosure would add ambiguity rather than certainty to the public discourse and this would not be conducive to the effective conduct of public affairs in Wales.

Section 29(1)(b) – Financial Interests

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Section 29(1)(b) of the FOIA. This states that information is exempt information if its disclosure under the FOIA would, or would be likely to, prejudice the financial interests of any administration in the United Kingdom.

Stage 1 – Engagement of Exemption

The information requested includes financial estimates for potential individual projects. Release of this information would be likely to prejudice any future tendering process, prejudicing the commercial and financial interests of the organisations concerned and the financial interests of Welsh Government as the grant provider. Allowing prospective tenderers to see prospective costs for projects would be likely to influence the tender prices they present. The effect of this would likely be that the local authority and the college would be faced with tenders that are all at or near the upper limits of their initial, unsubstantiated estimates, The near uniformity of tenders would be likely to

prejudice their ability to obtain the best value for any contracts awarded with the result that they would be likely to either overspend on projects or reduce spending elsewhere.

Section 29 is a qualified (public interest tested) exemption. This means that in order to engage it, we must show that the public interest in withholding the information is greater than the public interest in releasing it. We 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 we have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Stage 2

Section 29 (1)(b) – Public interest arguments in favour of disclosure

The Welsh Government recognises there is a public interest in releasing information around the potential plans of public bodies in relation to Band B of the 21st Century Schools and Education Programme. To release the information now would allow the public to see the types of projects that organisations are considering, increasing the level of transparency around this work. Further, by disclosing the potential estimated costs of the various options being considered, the public would be in a better place to understand how decisions are reached and whether the speculative options provide value for money.

Section 29 (1)(b) – Public interest arguments in favour of withholding

As we set out in our deliberation of the s36 exemption, the information provided by the local authority and college is early days, speculative, estimates of their likely proposals for the Band B program. Whilst some of the potential projects included in the information provided by our partners may be speculative and not go ahead, the projected costs for those projects are likely to carry credibility with prospective tenderers and they also provide an indication of the amounts that partners are thinking about spending. By its very nature the information provided to us will contain ideas that are not pursued but publication of the costs of these deliberations would be likely to indicate that the bodies have more money than is actually the case – what they can afford being one of the reasons why some of these early thoughts may not be taken further. However, making such information public could result in confusion as the amount of money the bodies have available, leading to tenders being “bumped up”, etc. It is not in wider public interest for any organisation to face increased costs either because:

- the disclosure of some very early draft costing suggests they may have more money than they actually do; or because
- the projected amount for the project turns out to be an overestimation.

It is in the greater public interest that local authorities and colleges are able to secure the best value for goods and services they purchase. Anything that

reduces their chance to obtain the best value from contract would result in the bodies getting less for their money with a reduction in the services they can provide to the wider community.

We believe that these considerations outweigh any benefits of releasing financial and commercially sensitive information.

Overall conclusion on 'public interest' test in relation to Sections 36 (2)(c) and 29 (1)(b)

We recognise that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of the 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, the information captured is very much subject to further development.

Whilst accepting that the public have a legitimate interest in the work of the Welsh Government and its partners and that release of this information would demonstrate our willingness to be open and transparent in the way that we work, we do not believe there is any pressing public interest in the release of this information at this time.

On balance, the Welsh Government considers that the public interest in favour of withholding the information outweighs the public interest in disclosure.