



Ein cyf/Our ref ATISN 11170

27 June, 2017

Dear ,

Request for Information – ATISN 11170

I wrote to you on 17 March acknowledging your request for information. In your request you asked for all communications between the Welsh Government and Newsquest from January 1st 2013 to date concerning grants and the Skills Growth Fund.

I subsequently wrote to you on 5 April informing you that the deadline for responding to the request had been extended as we were required to consider the public interest test against the s43 Commercial Interest exemption provided by the Freedom of Information Act 2000 (FOIA). A revised deadline for response of 3 May was noted. Regretfully, it has taken longer than expected to fully process your request. Please accept my apologies for the delay in providing you with this response. .

I confirm we hold information captured by your request. A copy of the information I have decided to release is enclosed.

I have decided that some of the information is exempt from disclosure under section(s) 40(2) Personal Data, Section 41 Information provided in Confidence and Section 43 (2) commercial interests of the Freedom of Information Act 2000 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



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

E&I FOI Team
Welsh Government
Treforest - QED Centre
Main Avenue
Treforest Industrial
Estate
Ponty pridd
CF37 5YR

EconomyandInfrastructureFOI@wales.gsi.gov.uk
www.gov.wales

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 .

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

ATISN 11170 – Consideration For and Against Disclosure of 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 interest tests.

Section 41 – Information provided in Confidence

This exemption states that:

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

In terms of the criteria set out under the exemption, the Welsh Government can confirm that the information was obtained from other individuals and that disclosure of it would constitute an actionable breach of confidence. Whilst section 41 is an absolute exemption and not subject to the statutory public interest test, the common law concept of 'confidential' contains its own inherent tests that need to be satisfied. These were identified in the leading case of *Coco v A N Clark (Engineers) Ltd* (ChD 1968) and I consider the following clauses to be relevant:

b) The information was communicated in circumstances importing an obligation of confidence.

An obligation of confidence can be expressed explicitly or implicitly. In their involvement with the application for funding, the participants provided sensitive information with the expectation that its confidence would be respected. The written representations made to us expressing concerns were also provided to us in confidence.

c) Unauthorised disclosure could cause a specific detriment, to either the party that provided it or any other party.

As stated above, the information exchanged with WG was provided in confidence. If this was released despite the expectation of confidentiality, this could cause reputational damage to the parties involved. It could also cause damage to the Welsh Government, as existing and future relationships could lose faith in our ability to respect confidence.

The Welsh Government is therefore of the opinion that release of commercial documents relating to this project would constitute an actionable breach of confidence and that would not be in the public interest.

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 Freedom of Information Act 2000 (FOIA). This states that 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).

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 public interest in openness and transparency within government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely.

However, the information captured by the request includes commercially sensitive information relating to the company's business plans, formation of the company and accounts which contain details of arrangements which are unique to this project. It also contains details of training plans, specifics of training courses and expenditure related to this project. All of this is commercially sensitive information and, if released, would be likely to prejudice the commercial interests of the company.

Whilst this information may be of interest to the companies' competitors and potential future projects and partners, I do not believe that it would be of interest to the wider public.

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 also believe that there exists a public interest in ensuring that private companies, such as this, which aim to create a significant amount of new jobs for the people of Wales, can do so in the knowledge that its efforts will not be prejudiced by the untimely disclosure of commercially sensitive information.

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 be likely to prejudice their commercial interests.

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