



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref ATISN 11431

4 October 2017

Dear ,

### Request for Information – ATISN 11431

I wrote to you on 8 September in response to your e-mail of complaint which we received on 6 September, 2017.

I have conducted an internal review of your request in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request, or via the internet.

I note in your request of 26 July you asked for a copy of the "Train Service Requirement" document issued to bidders for the 2018 Wales and Border Rail Franchise. In our response of 25 August, it was explained that the document to which you were referring is in draft form and was supplied to four authorised bidders as part of the dialogue phase of a competitive procurement process. The information was exempt from disclosure under the Section 28(1), Relations within the United Kingdom and Section 35(1)(a), formulation of Government Policy exemptions provided by the Freedom of Information Act 2000 (FoIA). You were provided with full reasoning for applying these exemptions.

In your e-mail of complaint, you stated "*Your grounds for refusal are spurious and unsafe at law*". You further stated "*You took far too long to deal with my original request and I request an improved service level to this e-mail*".



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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.

I have considered the response you received and your subsequent complaint.

I will firstly address the timeliness of your request. The statutory deadline for responding to your request was 23 August. I note we did not respond to you until 25 August. Under the FOIA, unless an extension has been legitimately applied then we are obliged to respond to requests for information within a statutory 20 working day timeline. On this occasion, I regret that we have breached this deadline and for this I apologise.

Turning, then, to the two exemptions relied upon to withhold the Train Services Requirement (TSR) document. As concluded in the response you received, the procurement for the franchise is a time limited exercise. At an appropriate time after the contract has been awarded, the Welsh Government intends to publish as much detail as it is able to regarding the franchise and contract which will include those non-commercially sensitive parts of the TSR document. Releasing all of the draft version of the TSR document which existed at the time your request was made would mean releasing into the public domain incomplete and what was likely soon to be out-dated information containing commercially sensitive material.

With this in mind, I have reviewed the arguments presented to you in relation to both the Section 28, Relations within the United Kingdom and Section 35(1)(a), Formulation of Government Policy exemptions. Having done so, I am satisfied that the TSR document is a policy document which is still being developed through iterative dialogue between the Welsh Government, the UK Government and other expert advisors. The policies and priorities in relation to the 2018 franchise are still under development because there are a number of potential changes which are still to be agreed, which is why the document currently only exists in draft form.

It is important for the Welsh Government to be able to consider all options with key individuals without fear of incomplete or draft documents of the TSR being disclosed into the public domain. To do so may not only cause confusion amongst members of the public, but also likely result in some or all of the individuals involved in the policy making process being less likely to engage in a free and frank manner if they thought their deliberations would be revealed. This in turn would likely prejudice the development of the TSR policy discussions with a less strenuous, in depth and less robust exploration of policy development options.

To conclude, I am satisfied that it was correct to rely on the Section 35(1)(a) exemption and that the information should continue to be withheld under it. The Section 28 exemption, however, is no longer being relied upon. For this reason, your complaint is upheld in part.

I trust the above provides a clearer explanation of our position on this matter.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office  
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 745  
Fax: 01625 524 510  
Email: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae, Pencoed, Bridgend, CF35 5LJ

Telephone: 0845 6010987 (local rate)  
Email: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk)

Yours sincerely

**Simon Jones**  
Director Transport and ICT Infrastructure