



26 October 2017

Dear ,

## Request for Information – ATISN 11529

I wrote to you on 3 October regarding your request for information in relation to our contract with BT Openreach to install high speed broadband across Wales. Thank you, also, for your e-mail of 24 October, the contents of which I have noted.

You asked for:

1. A copy of the contract delivery terms, namely the obligations placed on BT.
2. The latest performance/project report provided to the Welsh Government by BT on BT's progress with delivery of the contract and its estimated completion date.

I confirm we hold information captured by your request. For your first question, I enclose at Annex A the relevant Clause of our contract with BT, namely Clause 5, together with the clauses it references. I have concluded that some of this information (Appendix 1 (Initial Documents) and Clause 20.1) is withheld from disclosure under Section 43(2), prejudice to commercial interests, of the Freedom of Information Act 2000 (FoIA).

I have concluded that the report you have requested in your second question is withheld from disclosure under Section 41, information provided in confidence, and Section 43(2), prejudice to commercial interests, of the FoIA. The key information from these reports which relates to deployment progress is, however, regularly released in to the public domain through statements and press information. The latest progress report from BT states that to date 653,315 premises have been provided with access to fast broadband at a download speed of at least 24Mbps.

Full reasoning for applying these exemptions is given at Annex B.

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



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](mailto:EconomyandInfrastructureFOI@wales.gsi.gov.uk)

[FreedomOfInformationOfficer@wales.gsi.gov.uk](mailto: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

5. **Grantee's Obligations**

5.1 **Initial documents:** Appendix 1 (Initial Documents) contains the initial version of the following documents, which the Grantee may change to the extent permitted by this Agreement:

- 5.1.1 Wholesale Service Descriptions;
- 5.1.2 Network Architecture Documentation;
- 5.1.3 Operational and Enterprise Support Systems documents; and
- 5.1.4 Marketing Plan.

The Grantee must maintain each of the above documents for the term of this Agreement.

5.2 **Principal obligations:** The Grantee must carry out the Broadband Works, comprising the Implementation Works, the Marketing Activities and the Operational Works.

- 5.2.1 The Implementation Works comprise the creation of the Network, OESS and other works which are to be carried out by the Grantee in order to ensure that Broadband Coverage is achieved throughout the Contract Intervention Area, including throughout Value Zones, and that the Operational Works can be supported;
- 5.2.2 The Operational Works comprise the Maintenance Operations, the provision of Wholesale Services and the sales and support of Wholesale Services, each in accordance with this Agreement;
- 5.2.3 The Maintenance Operations comprise the updating, maintenance, fault management, performance optimisation (when required) and capacity augmentation so that the Network continues to meet the Network Standard; and
- 5.2.4 The Wholesale Services comprise the provision by the Grantee of services to enable Retail Service Providers to provide Retail Services over the Network. Wholesale Services are set out initially in section 1 of Appendix 1 (Initial Documents) and amended pursuant to clause 5.17.

5.3 **Carrying out the Broadband Works:** The Grantee must carry out the Broadband Works so:

- 5.3.1 as to comply at all times with all provisions of this Agreement; and
- 5.3.2 that Broadband Coverage is achieved throughout the Contract Intervention Area by 30<sup>th</sup> June 2017 and in any event by the Drop Dead Date, as follows:
  - 5.3.2.1 a minimum of ninety per cent (90%) of all Premises in the Contract Intervention Area are capable of having access to broadband services at a minimum of 30Mbps PPIR with 2Mbps CIR;
  - 5.3.2.2 a minimum of ninety five per cent (95%) of all Premises in the Contract Intervention Area are capable of having access to broadband services at a minimum of 24Mbps PPIR with 0.5Mbps CIR; and
  - 5.3.2.3 a minimum of forty per cent (40%) of all Premises in the Contract Intervention Area are capable of having access to broadband services at a minimum of 100Mbps PPIR with 10Mbps CIR.
- 5.3.3 as to comply with the Annual Targets.

For the avoidance of doubt and notwithstanding any other term to the contrary the sole right and remedy for the Welsh Ministers if the Grantee fails to achieve Broadband Coverage at 30th June 2017 and the Drop Dead Date is set out in clause 20 below.

- 5.4 **Capacity of Network:** The minimum levels of CIR set out in clause 5.3.2 reflect the short term expected reasonable market demand, which the Grantee and the Welsh Ministers acknowledge may increase. The Grantee shall ensure that the capacity of the Network is upgraded such that the Network itself does not unreasonably limit CIR. Such upgrades shall be implemented in a reasonable way to encourage take-up of Retail Services delivered over the Network that offer higher bandwidth content, such as high definition television.
- 5.5 **General obligations:** The Grantee undertakes, subject to the terms and conditions of this Agreement, to:
- 5.5.1 perform all its obligations under this Agreement in accordance with Good Industry Practice;
  - 5.5.2 perform all its obligations under this Agreement in accordance with all applicable Laws as they apply from time to time to the Broadband Works and other activities and obligations of the Grantee under this Agreement; and to the Grantee as a company located in the European Union. Specifically, to the extent that the Construction (Design and Management) Regulations 2007 (as amended and updated) apply to the Broadband Works, the Grantee must undertake all the obligations of a client (as defined in those Regulations) in respect of any Civil Works Contractor appointed from time to time;
  - 5.5.3 obtain and maintain throughout the term of this Agreement all consents, licences and permissions it may require from time to time to carry out the Broadband Works;
  - 5.5.4 provide the Welsh Ministers with such reasonable information, assistance and co-operation as the Welsh Ministers may require from time to time in respect of the Grantee's carrying out the Broadband Works and any matter related to this Agreement;
  - 5.5.5 comply with reasonable deadlines set by the Welsh Ministers for any requests for information in whatever form regarding the progress of the Broadband Works;
  - 5.5.6 meet with the Welsh Ministers whenever reasonably required to discuss the progress of the Broadband Works;
  - 5.5.7 carry out the Broadband Works at all times in a manner that is not, and is not likely to be, injurious to health or damaging to property; and
  - 5.5.8 ensure that all infrastructure within the Network complies with mandatory industry standards for public broadband networks, including as a minimum those mandatory standards for public broadband networks determined by the Standards Bodies, as the same may change from time to time during the term of the Agreement.
- 5.6 **Critical National Infrastructure:** The Grantee acknowledges that, to the extent the Network will form part of the United Kingdom's Critical National Infrastructure and where there is a legal or regulatory requirement in respect of the same the Grantee will take steps to ensure it complies with all legal and regulatory requirements issued from time to time in respect of Critical National Infrastructure by the Government of the United Kingdom and/or the Electronic Communications – Resilience and Response Group (or any replacement of the foregoing or any additional or substitute governmental (or quasi-governmental) body having jurisdiction or authority in respect of the Critical National Infrastructure).

- 5.7 **Public sector traffic:** The Network must be capable of carrying public sector traffic which may be classified up to the Government Communications Headquarters (GCHQ) Communications Electronic Security Group (CESG) Impact Level 2.
- 5.8 **Network Architecture:** The Grantee has described the initial Network Architecture in section 2 of Appendix 1 (Initial Documents) and may vary unilaterally any aspects of the Network Architecture where this does not detrimentally affect the Grantee's performance of its obligations under this Agreement. The Grantee must make such variations to the Network Architecture as are necessary to meet the Grantee's obligations under this Agreement.
- 5.9 **Network Architecture Documentation:** The Grantee must maintain clear and comprehensive documentation accurately describing the Network Architecture (the "Network Architecture Documentation"), which must include the following information:
- 5.9.1 a diagram showing the Network Architecture, showing how all Wholesale Services integrate;
  - 5.9.2 a description of the technologies used for each of the Wholesale Services;
  - 5.9.3 evidence of how the Network Architecture supports contracted PPIR, CIR and appropriate Wholesale Services standards;
  - 5.9.4 dimensions of all material elements of the technical solution, including switches, circuits, and all other equipment;
  - 5.9.5 a description of short and medium term material changes to technical requirement anticipated and evidence that the Network Architecture and its components are specified sufficiently to maintain the Network Standard;
  - 5.9.6 a description of any technical/operational risks to integrity of the Network and how the Network Architecture mitigates against their impact; and
  - 5.9.7 a description of the Design Rules used by the Grantee to locate and dimension Points of Premises Passed and to assess which Premises are eligible to become Premises Passed as a result of the successful implementation of a Point of Premises Passed,

and must release the then current Network Architecture Documentation to the Welsh Ministers promptly and in any event within five (5) Working Days of request, unless the Grantee has reasonable concerns that such release may affect the security or integrity of the Network. In such circumstances, the Grantee must permit representatives of the Welsh Ministers or the nominated agent of the Welsh Ministers (subject to appropriate security vetting, to be conducted reasonably) to inspect the Network Architecture Documentation under the supervision of the Grantee.

- 5.10 **Significant changes to the Network Architecture:** Should the Grantee undertake changes to the Network Architecture which are likely to cause interruption to the Wholesale Services then the Grantee will provide such notice to the Welsh Ministers in advance of such change as it typically provides to its Retail Service Provider customers.
- 5.11 **Operational and Enterprise Support Systems:** The Grantee must describe the OESS, including the OSS/BSS and financial systems, and their design in section 3 of Appendix 1 (Initial Documents) and may vary unilaterally any aspects of the OESS where this does not detrimentally affect the Grantee's performance of its obligations under this Agreement. The Grantee must make such variations to the OESS as are necessary to meet the Grantee's obligations under this Agreement.
- 5.12 **Description of the OESS:** The Grantee must maintain a clear description of the OESS and must release the then current version of this documentation to the Welsh Ministers promptly and in any event within five (5) Working Days of request.

- 5.13 **Implementation and maintenance of the OESS:** The Grantee must implement and maintain the OESS in line with acceptable UK market standards. Functionality shall include but not be limited to:
- 5.13.1 Provisioning;
  - 5.13.2 fault management;
  - 5.13.3 change management (including configuration management);
  - 5.13.4 capacity management;
  - 5.13.5 service performance monitoring on a per Customer connection basis; and
  - 5.13.6 charging.
- 5.14 **OESS interface:** The Grantee must provide an interface to all relevant OESS for Retail Service Providers to meet all reasonable current and future UK market needs and expectations. This interface must at least have the same or similar functionality as the Equivalence Management Platform (EMP) currently implemented in the UK. The interface shall allow convenient management and monitoring facilities to Retail Service Providers for:
- 5.14.1 service orders;
  - 5.14.2 service availability and performance on a per Customer connection basis;
  - 5.14.3 faults; and
  - 5.14.4 billing.
- 5.15 **Inventory Management System (“IMS”):** The Grantee must implement and maintain as part of the OESS an IMS that will keep accurate records of all assets whose acquisition was funded under this Agreement and which have an original purchase value of one thousand pounds (£1,000) or more. This must include an inventory of redundant and replacement assets over the term of the Agreement. The IMS records must include, as a minimum for each asset, the Inventory Information.
- 5.16 **Release of IMS:** The Grantee must release a copy of the IMS to the Welsh Ministers promptly and in any event within five (5) Working Days of request.
- 5.17 **Project management:** The Grantee must manage the Broadband Works using generally accepted project management principles.
- 10.17 in the case of delay or failure to the Operational Works only, an extension of time equal to the effect of such Relief Event within which to remedy the failure,
- 14.3 **Making Wholesale Services available:** The Grantee must ensure that throughout the Operational Phase:
- 14.3.1 it makes the Wholesale Services available so that they conform with the Wholesale Services Principles;
  - 14.3.2 each Wholesale Service performs to at least the minimum requirements set out in the template Wholesale Service Description at Table 1 below, including Availability, PPIR, CIR, Upstream PIR and Upstream CIR; and

14.3.3 all Wholesale Services can be delivered within their respective Maximum Provisioning Times and are delivered on average within their respective Average Provisioning Times, subject to the provisions of clause 10.1.7;

14.3.4 it adapts the Wholesale Services to meet reasonable market demand effectively, whether by creation of new services or improving its services to Retail Service Providers.

14.5 **Amendment of Wholesale Services:** Subject to clause 5.17, the Grantee may amend the Wholesale Services at any time. The Grantee must maintain accurate Wholesale Service Descriptions and promptly provide the Welsh Ministers with a copy of each completed or amended Wholesale Service Description.

20.2 **Exclusive remedy:** The Welsh Ministers acknowledge that the remedies outlined at clauses 20.1.1 and 20.1.2 above shall be the Welsh Ministers' sole and exclusive remedies if the Grantee fails to achieve the Broadband Coverage specified in each of those sub-clauses at the Drop Dead Date.

### **Section 41 – Information Provided in Confidence**

This exemption applies to your second question.

Section 41 sets out an exemption from the right to know where the information requested was provided to the public authority in confidence and disclosure of the information would give rise to an actionable breach of confidence.

Section 41 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.*

The information contained in BT's performance report to the Welsh Government contains detailed technical project information. As such the information is neither trivial nor is it, at this point in time, publicly accessible. The information was provided to the Welsh Government by BT in confidence and on the explicit understanding that access to that information would be closely restricted. BT has not provided consent for us to make this information available to any party who asks for it.

Consequently I believe that the information is owed a legal duty of confidence and that disclosure without consent would result in an actionable breach of that confidence.

Section 41 is an absolute exemption and is not, therefore, subject to the public interest test.

### **Section 43(2) – Commercial Interests**

This applies to Appendix 1 (Initial Documents) and Clause 20.1 in relation to your first question and to some of the information in your second question.

This exemption states that:

- (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).*

As identified above, much of the information relates to the financial and technical aspects of the project. If this information was to be placed into the public arena, at this time, I believe that it would be likely to prejudice BT's ability to fairly engage in future tender exercises to roll out superfast broadband to other areas in the UK.

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.

### *Prejudice Test*

The withheld information is commercially sensitive information which would be likely used to the advantage of BT's competitors. BT is still actively competing with other companies to win similar business. There is a pipeline of opportunities currently available for BT to bid for in order to provide similar services to other public authorities.

Disclosure of detailed financial information about the costs of the project and detailed information about BT's network would likely provide BT's competitors with valuable commercial information that would provide them with a competitive advantage over BT and which would be likely prejudicial to future bids for public funding and the continued commercial roll-out of BT's network. It would also give other Suppliers an insight into the deployment and challenges that they would not normally otherwise.

### *Public interest arguments in favour of release*

I acknowledge there is a 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. It is also recognised that the public have a right to know that the Welsh Government is investing public money wisely and that the awarding of public sector contracts is done fairly and within the rules.

### *Public interest arguments in favour of withholding*

The withheld information is commercially sensitive which, if released, would be likely to be prejudicial to the commercial interests of BT as it is likely it would be used to the advantage of BT's competitors. As stated above, BT is still actively competing with other companies to win similar business. There is a pipeline of opportunities currently available for BT to bid for in order to provide similar services to other public authorities.

Disclosure of detailed financial information about the costs of the project and detailed information about BT's network would be likely to provide BT's competitors with valuable commercial information that would provide them with a competitive advantage over BT and which would be prejudicial to future bids for public funding and the continued commercial roll-out of BT's network.

It would also give other Suppliers an insight into the deployment and challenges that they would not normally otherwise see.

I am satisfied that disclosure of the withheld information would be likely to result in BT failing to compete in the market place and thus would be likely to prejudice its commercial interests. Whilst the information may be of interest to those working in direct competition with BT, I cannot see any wider public interest in releasing the redacted information. As such, I have concluded that the public interest in withholding the information outweighs that in releasing it.