

Grŵp Yr Economi, Sgiliau a Chyfoeth Naturiol
Economy, Skills and Natural Resources Group

Ein cyf/Our ref: ATISN 10626

26 August 2016



Llywodraeth Cymru
Welsh Government

Dear ,

ATISN 10626

Thank you for your email which I received on 1 August 2016 regarding the YESS application of Mr Arwel Jenkins, Bryn Rhosyn, Llandybydder.

Within that email you made a Freedom of Information request for a copy of the YESS application from Mr Jenkins.

I have decided that some of the information within that application is exempt from disclosure under section s41(1) (Information owed a legal duty of confidence) of the Freedom of Information Act, 2000 (FOIA) and is therefore withheld. The reasons for applying these exemptions are set out at Annex 1 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

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.

You also asked a number of questions within your letter. These, along with my response were:

- Do you ask if relevant planning is in place? – **YES.**
- Do you ask for a site drawing? – **YES.**
- Do you ask for a site location? – **YES.**
- If you ask for the above, how did Mr Jenkins respond? – **Mr Jenkins provided all of the requested information.**
- Who would we contact if we believe that a possible fraud may have been committed and do you have the powers to claim YESS grant money back. – **If you suspect a fraudulent case has occurred, you may contact the YESS team at the address below. The Welsh Government has the authority to reclaim any monies it feels have been obtained fraudulently through the YESS scheme.**

Yours sincerely

ANNEX 1

I believe that the information contained within the submitted YESS application form is exempt from disclosure by virtue s41(1) exemption provided by the FOIA.

It is important to note that information released in response to an FOI request becomes available to the World, not just to the party making the request. As such we have to consider the potential effects of disclosure to the wider World and where the wider public interest lies, irrespective of the specific interest the party making the request may have.

S41(1) “Confidential information”

This exemption is engaged where disclosure of the information would result in an actionable breach of confidence. That is, if we were to release the information, we would be liable to be sued for breach of contract.

For information to be considered “confidential” two conditions need to be met:

1. The information was shared in an arena where a duty of confidence was implied or expressly given; and,
2. The information must possess a “quality of confidence”.

Mr Jenkins entered the YESS application process with the reasonable expectation that any sensitive information he provided in his YESS application would be treated as confidential and there would be no expectation that such information would be placed into the public arena. As such I believe that as far as the financial information was concerned that information was shared under an implied arena of confidence.

For information to possess the necessary “Quality of confidence” that information cannot be trivial or available/accessible from other sources. In addition the information must be worthy of protection. Most people would be of the view that financial information relating to either an individual or an organisation has an inherent degree of sensitivity surrounding it. Where there is no obligation or requirement to make such information available to the World, then most people would expect any party to which such information is shared with to handle that information sensitively and restrict the audience to that information to those who have a legitimate need to access it. Such information is clearly not trivial not, unless the owner of the info decides to make it public, is it reasonably accessible to the World. I believe such information is worthy of protection.

I believe the information falls meets the conditions as outlines and thus is owed a legal duty of confidence.

Section 41(1) is a qualified exemption, which means that it is subject to a public interest test.

Public Interest Test

The Young Entrants Support Scheme (YESS) is part of our support for farming and the rural economy and is designed specifically to encourage young people into farming and to develop their farming businesses. With all schemes utilising public money there is a requirement that such money is allocated and used for the purposes it is provided and that those purposes fulfil the purposes for the specific funding scheme. As such there is an inherent expectation of some degree of public scrutiny to ensure the public clearly understand where and why public money is being spent, that it is spent in ways that benefit

not just the recipient but the wider community, and that we obtain value for money for that support.

Against that, there is an expectation that the Welsh Government would, were appropriate, protect sensitive, and particularly, financial information that it is provided with in support of funding applications.

It is in the public interest that the Welsh Government is able to protect such sensitive information from being accessed by a much wider audience, as if such information were to be released then there is a very real risk that those applying for support will be more reticent in supplying the level of detail required for officials to fully scrutinise applications. This would lead to less funding being distributed. In addition, if those considering making applications were to believe such sensitive information would be released by ourselves they may decide not to apply for support. The end result would be that the scheme could fail to meet its aims and objectives.

On balance, I believe wider public interest lies in favour of maintaining the exemption and, as such, I believe the financial information is exempt from disclosure by virtue of the s41(1) exemption.