



Llywodraeth Cymru  
Welsh Government

18 January 2021

Dear

**ATISN 14685 - WEFO funding for developments at Llanbedr Airfield**

I wrote to you on 21 December regarding your request for information relating to Llanbedr Airfield and the associated link road. You asked for -

1. Business Plan Version 0.5, dated 30/04/2018 as referred to in the letter from the Welsh Government to Gwynedd County Council dated 3 May 2018; and
2. Delivery Profile Version Annex C, dated 30/04/2018 as referred to in the letter from the Welsh Government to Gwynedd County Council dated 3 May 2018.

A copy of the information I have decided to release is enclosed.

I enclose the business plan referred to in question 1, however I have concluded certain information is exempt under regulation 12(5)(e), confidentiality of commercial information under the Environmental Information Regulations 2000 (EIR's) and therefore this is a redacted version. I have also concluded that the information relating to question 2, namely the delivery profile, is exempt under regulation 12(5)(e), confidentiality of commercial information under the EIR's. Where information has been withheld, the reasoning for doing so 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: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales).



Swyddfa Merthyr Tudful / Merthyr Tydfil Office  
Rhydycar / Rhydycar  
Merthyr Tudful / Merthyr Tydfil  
CF48 1UZ

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

**Regulation 12(5)(e) – confidentiality of commercial or industrial information**

This exception of the Environmental Information Regulations 2000 (EIRs) relates to all of the withheld information. The exception states:

*12.—(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—  
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest*

In order to refuse information under this Regulation, guidance<sup>1</sup> from the Information Commissioner states that public authorities will need to establish that:

- *the information is not on emissions;*
- *the information is commercial or industrial in nature;*
- *it is confidential under either the common law of confidence, contract, or a statutory bar;*
- *the confidentiality is protecting a legitimate economic interest;*
- *the confidentiality will be adversely affected by disclosure; and*
- *the public interest in maintaining the exception outweighs the public interest in disclosing the information.*

The withheld information relates to Gwynedd County Council (“the Council”) and a commercial company namely Snowdonia Aerospace Centre LLP (“Snowdonia”) and its proposed future business activities. The company holds the site under a commercial lease and is a commercial venture. In so far as it relates to its activities, financing and intentions the information is commercial in nature. The information is both commercial and confidential in nature and is not regarding emissions. The confidential information includes sensitive financial information and it is neither trivial nor is it publically accessible. The affected third parties have not provided consent for the Welsh Government to make this information available to any party who asks for it. As such, it is owed a legal duty of confidence and disclosure without consent would result in an actionable breach of that confidence. In withholding the information, the Welsh Government is therefore protecting the legitimate economic interests of the affected third parties.

*Prejudice Test*

Having consulted with the affected third parties, I believe the withheld information, if released into the public domain, would prejudice the economic interests of the third parties. The information was provided in confidence to support an application for public funding. Information provided under a condition or assurance of confidence is protected by law. In particular a reasonable person, standing in the shoes of the Council, would have considered the information that Snowdonia had given it, had in fact been provided in confidence. Neither Snowdonia, nor the Council in general had a reasonable expectation that the information exempted would be disclosed and reach the public domain.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1624/eir\\_confidentiality\\_of\\_commercial\\_or\\_industrial\\_information.pdf](https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf)

The company has a legitimate commercial interest in ensuring that its proposed project proceeds without hindrance or interference on such commercially sensitive matters, particularly given the sums already invested by both private investors and the Welsh Government. To release the information at this time would be likely to harm the company's efforts in this regard. Disclosure would also be likely to mean the company experiences a limitation in its ability to maintain competitive tension with its investors if they are aware of the Welsh Government's commercial considerations, which would be likely to reduce the company's ability to secure value for money from its additional investments.

*Public interest arguments in favour of release*

Given the fundamental significance of this project, the Welsh Government acknowledges there is significant public interest in the proposed project with strong feelings both for and against it. The Welsh Government also acknowledges there is public interest in openness and transparency within Government, particularly in terms of how the Welsh Government spends public money and that the money is invested wisely.

*Public interest arguments in favour of withholding*

The common law of confidence: In order to qualify the information has to have the necessary quality of confidence, information relating to the development of the units and of the road cannot on any reading be considered to be trivial. The information relates to the proposed business activities of a commercial company. The company is also a commercial landlord and putative landlord and as such information relating to its properties and its plans in relation to those developments will have Commercial value and implications for the company.

The information requested, in particular the delivery profile, also includes detailed financial information relating to proposed contracts which will be the subject of procurement and tendering exercises.

Information about anticipated contract costs is capable of informing potential bidders of anticipated spend and would encourage target bidding. Publication of such information would lead to the undermining of the value for money advantage of truly competitive bidding.

The Information Rights Tribunal confirmed in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd (EA.2010/0106)* (4.1.11) that to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. In this instance these parties are (1) Snowdonia, and (2) the Council (a) in its role as a highway authority in constructing the road, (b) in its role as consultant in costing the road, and (c) the Council as the grant applicant. The information sought is sensitive, for disclosure would, it is more probable than not, cause some harm to (1) Snowdonia and its potential tenderers. at the date of the request; (2) disclosure would also harm the Council.

Disclosure would make it more difficult for the Council in future to receive relevant sensitive information (technical and costing information) from third parties. A third party would be less confident in the Council's ability to keep that third party's

sensitive information confidential. This would compromise future applications which are reliant on robust and frank business cases prepared in close partnership with businesses who have legitimate interests to protect. The Council would become less successful in its future bids for grants. This would probably place the local economy and local job-prospects at a disadvantage.

The information which is withheld also includes legal advice related to the proposal. Elements of the advice relate to matters which are held by reason of commercial sensitivity. This is client advice privilege. It is withheld on the following basis.

The principles are set out in the decision in *Bellamy v Information Commissioner* (EA/2005/0023): A client must be able to consult with solicitors in confidence. The preparedness of clients to seek legal advice could be undermined if there is uncertainty about the ability of the solicitor to give comprehensive and fearless advice. Public bodies also need to be able to access full and open legal advice if they are to be able to full discharge their functions. Waiver of this right affects the ability of a public body to work effectively and appropriately consider and weigh up risks and decision making factors. There is a clear public interest in protecting this ability in order to ensure the highest standards of due diligence in public decision making.

In conclusion, taking into consideration the above reasoning, it is the view of the Welsh Government that the balance of public interest is likely to favour withholding the information. This balance may change over time.