

**Grŵp Iechyd, Gofal Cymdeithasol a'r Blynyddoedd
Cynnar Health, Social Care and Early Years Group**



Llywodraeth Cymru
Welsh Government

Ref: ATISN 19620

21 June 2024

Dear ,

ATISN 19620 – South Quay Development, Pembroke

Thank you for your request to the Welsh Government for information received on 23 May 2024 regarding the South Quay Development, Pembroke. We have taken the decision to treat your request under the Environmental Information Regulations (2004)/Freedom of Information Act (2000). You requested the following:

- *In their update to Pembrokeshire County Council Cabinet of 20th May 2024, Pembrokeshire County Council state that they have applied for IRCF for South Quay Development in Pembroke. Please could you disclose the application?*

Our Response

Welsh government can confirm that we have received the application for IRC funding for South Quay Development on 03 April 2021. A copy of the application form is attached.

I have concluded that some of the support documents for this application is exempt from disclosure under the following sections of the Environmental Information Regulations (2004) and Freedom of Information Act (2000). An explanation of our application of this exemption is set out at the Annex 1 to this letter.

- Commercial interest – Section - 12(5)(e) Confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate economic interest.
- Commercial interest – Section - 43 Section 43(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).

I have also decided some information included in supporting the documents amounts to third party personal data and is exempt from disclosure under section 40(2) of the Freedom of Information Act, 2000 (FOIA), as set out in Annex 2 of this letter.

Next Steps

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

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,

[Tîm Busnes y Llywodraeth](#) | Government Business Team
Grŵp Iechyd, Gofal Cymdeithasol a'r Blynyddoedd Cynnar | Health, Social Care and Early Years Group
[Llywodraeth Cymru](#) | Welsh Government

Annex 1

EIR - Engagement of Section 12(5)(e) FOIA – Engagement of Section 43(2)

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

Section 43(2) exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, the public authority itself or any other legal entity).

Officials have carefully considered all of the information captured by this request and consider that the information in question should be exempt under Regulation 12(5)(e) of the Environmental Information Regulations 2004/

Both are public interest exemptions, which means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

Public interest arguments in favour of release

We understand that the supporting documents would be of general interest to the wider population regarding the development of South Quay and its release would promote transparency around the work that is being proposed. This could increase public understanding and accountability and further a meaningful debate around the development of the site.

Public interest arguments in favour of withholding

It is important for companies to share commercially sensitive information with us in the confidence that that information will not then enter the public domain and damage their wider commercial interests and opportunities. Disclosure of the requested information in this case would be contrary to legitimate expectations of confidentiality and especially relevant to the request, is that disclosure would likely reveal information about new projects being considered that would reveal unique details about future projects and so obviously damage any competitive edge.

The commercial sensitivities mean that on this occasion we consider that the public interest would not be served by its release.

Conclusion

Whilst recognising that there is public interest argument for sharing the supporting documents, on balance, we consider that the public interest in disclosing the information is outweighed by the public interest considerations in favour of withholding the information for the reasons above. We have therefore withheld information by engaging Section 43(2).

Annex 2

S.40 (2) – Personal information about others

Section 40 sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

The application form, BJC, stakeholder map and letters of support contain the names of living individuals connected with the application. Under Section 40(2) of the Freedom of Information Act (FOI Act), personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the first principle to be of most relevance in this instance.

The first data protection principle states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that the information in this case clearly falls within the description of personal data as defined by the DPA and that disclosure would breach the first data protection principle. The first data protection principle has two components:

- 1 Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.
- If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it

would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

I have concluded that there is a reasonable expectation that the identity of the living individuals connected with the application would not be made public. It is my view, therefore, that disclosure of the redacted information would breach the first data protection principle, and thus is exempt from release under section 40 of the FOI Act.