

26 September 2024

Dear

Request for Information - ATISN 20888

Thank you for your request for information which I received on 29 August. Your two requests have been logged together and both fall under reference ATISN 20888. You have asked for the following information relating to Cardiff Airport:

Part 1: a copy of the plan for how the proposed £206m public subsidy by the Welsh Government to Cardiff Airport will be targeted, including a breakdown of the figures – as referenced in the Cabinet Secretary for Economy, Transport, and North Wales' Written Statement on 22/07/24; and

Part 2: a copy of the analysis commissioned by the Welsh Government on the economic consequences of the proposed subsidy of Cardiff Airport – as referenced in the Cabinet Secretary for Economy, Transport, and North Wales' Written Statement on 22/07/24.

Our Response

The Freedom of Information Act (FOIA) provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations. We have decided to withhold some information and have set out in **Annex A** the relevant exemptions under the FOIA we believe are applicable and why we believe the information should not be disclosed. This includes our consideration of the public interest test.

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.

Telephone: 0303 123 1113

Website: www.ico.org.uk

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

The request you sent me contains personal information about you - for example, your name and email address. The Welsh Government will be the data processor for this information and, in accordance with the General Data Protection Regulation, it will be processed in order to fulfil our public task and meet our legal obligations under the Act to provide you with a response. We will only use this personal information to deal with your request and any matters which arise as a result of it. We will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Under data protection legislation, you have the right:

- to be informed of the personal data we hold about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further information about the information which the Welsh Government holds and its use, or if you wish to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Email: DataProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Telephone: 0303 123 1113

Website: www.ico.org.uk

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <https://gov.wales/about/open-government/freedom-of-information/responses/?lang=en>).

Yours sincerely

Annex A

The FOIA provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

We have decided to withhold information in line with the below exemptions under the FOIA.

<u>Part 1:</u> a copy of the plan for how the proposed £206m public subsidy by the Welsh Government to Cardiff Airport will be targeted, including a breakdown of the figures	Section 35(1) – Formulation of Government Policy Section 43(2) – Commercial interests
<u>Part 2:</u> a copy of the analysis commissioned by the Welsh Government on the economic consequences of the proposed subsidy of Cardiff Airport	Section 35(1) – Formulation of Government Policy Section 43(2) – Commercial interests

This annex sets out the reasons for the engagement of these sections of the FOIA and our subsequent consideration of the Public Interest test.

S35(1)(a) formulation of government policy

Section 35(1)(a) covers any information relating to the formulation or development of government policy. The information requested relates to our referral to the Competitions and Markets Authority (CMA) regarding a public subsidy to support the long-term future strategy of Cardiff Airport. Information we hold relates to the formulation of this policy area, which will remain as ongoing work until the CMA has provided its view on the subsidy and Welsh Ministers have considered how they wish to proceed in the light of the CMA's report. Release of information that remains subject to ongoing discussions and development work would be likely to prejudice these discussions and adversely affect the policy development.

As this is very much a live issue, we are of the view that the s35(1)(a) exemption is engaged by the information captured by this request.

The use of section 35(1)(a) is subject to a public interest test.

Section 43(2) – commercial interests

Section 43(2) covers any information that if disclosed that would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The information requested contains financial and commercial information which, should it be disclosed, would be likely to prejudice Cardiff Airport and companies engaged in commercial discussions with Cardiff Airport. To reveal the information would be likely to prejudice their commercial interests should the information associated with this matter be disclosed. The information would reveal commercially sensitive information not otherwise publicly available and which, if disclosed would be likely to prejudice the companies' service offerings and future strategies.

Disclosing the information would give any competitors a distinct commercial advantage and stepping stone which would be likely to put the companies' own business at risk and therefore prejudice their ability to engage in future commercial activities. We do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest.

Public interest arguments in favour of release

We understand that formulation of development of government policy with regards to Cardiff Airport is of interest to the general public. It is important that public service activities carried out are appropriately transparent to provide assurance to citizens. We are also aware of additional interest in the matter following the Written Statement issued by Ministers to which you referred.

Public interest arguments in favour of withholding

We take the view that the section 35(1(a) is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options.

The withheld information relates to Welsh Government policy views on the strategic long-term future of Cardiff Airport. It is important to note that the long-term future strategy of the airport is currently subject to a subsidy referral to the Competition and Markets Authority and is therefore still in development and subject to change. Therefore, it is possible that the information held is already out of date.

As part of the formulation of this, we are heavily reliant on Government officials being able to provide advice and exchange views in an open and frank way, exploring various options as part of the normal working process. Officials need to be able to think through and discuss all the implications of different options, be able to undertake rigorous and candid assessments in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far-reaching implications than appropriate. This should include the ability to receive information from external parties on a confidential basis or the candour of the engagement will certainly be weakened. Releasing the information that Welsh Government holds at this time may lead to significantly less considered and a less effective policy in this important area.

We take the view that Section 43(2) is intended to ensure that information is not disclosed that would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

. To freely disclose the information would give any competitors a distinct commercial advantage and stepping stone which would be likely to put their business at risk and therefore prejudice the companies' ability to engage in future commercial activities. Cardiff Airport does not have access to similar information on its competitors as they do not publish it, so would be at a significant disadvantage. We believe the resultant harm should this information be released, would be substantial.

The information contains financial workings and supporting analysis disclosure of which would prejudice the firms' commercial or legitimate economic interests. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest. I further do not believe there is a public interest in prejudicing the commercial interests of the companies by the release of this information.

I am aware that, as a general rule, the sensitivity of some information may be likely to reduce over time; therefore the age of the information, or timing of the request, may be relevant in determining whether to apply an exemption, or where the public interest may lie. In this case, however, the information captured is very much current information. I believe therefore that the balance of the public interest falls in favour of withholding the information.

Conclusion

We believe that it is within the wider public and commercial interest of the Welsh Government, Cardiff Airport and companies engaged with Cardiff Airport to withhold the information related to this request in order to provide the government with a safe space to consider live policy issues away from external intrusion and to prevent putting Cardiff Airport and associated businesses at a unfair competitive disadvantage. Furthermore, it is vital that the Welsh Government is not appearing to unduly influence or prejudice the findings of the CMA. The Welsh Government endeavours to ensure it is as transparent as possible, in particular through the media, publication of documents, Ministerial Written Statements and public statements in the Senedd. We take the view that, on balance, this public interest has been satisfied and the information requested has been withheld under section 35(1)(a) and section 43(2) of the Act for the reasons set out above.