



Eich cyf/Your ref
Ein cyf/Our ref ATISN 9677

Andrew Reeves

request-283697-847f99db@whatdotheyknow.com

19 October, 2015

Dear Mr Reeves

Request for Information – ATISN 9677

I wrote to you on 3 August 2015 regarding your request for information. I'm sorry for the delay in responding to you. In your request you asked for the amount of support the Welsh Government has provided to Red & Black Films, which funds have provided the support and copies of the associated applications.

Red and Black Films has been supported through the Welsh Government's Media Investment Budget and Repayable Business Finance. The amount of grant funding provided under Repayable Business Finance is exempt from disclosure under Section 22 of the FOI Act, information intended for future publication. The amount borrowed under the Media Investment Budget is exempt from disclosure under Section 43, commercial interests, and Section 29(1)(b), economic interests of the Freedom of Information Act 2000. The copies of the associated applications is exempt from disclosure under Section 43, commercial interests. Full reasoning for applying these exemptions is attached.

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
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:



St Line House
Mount Stuart Square
Cardiff Bay
CF10 5LR

david.ball@wales.gsi.gov.uk
www.gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

David Ball
Business Development Manager

Section 22 – Information Intended for Future Publication

Section 22 states that *Information is exempt information if –*

- a) *The information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)*
- b) *The information was already held with a view to such publication at the time the request for information was made, and*
- c) *It is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph a).*

I am of the opinion that subsections (a) and (b) above are met because the information is held with a view to its publication. This information is expected to be published in February 2016. With regards to part (c), I have given consideration as to whether it would be 'reasonable in all the circumstances' that the information should be withheld from disclosure until the proposed publication date. I am of the opinion that releasing the information at this time would cause disruption to the Welsh Government's intentions in relation to its publication arrangements. Thus I am content that the exemption is engaged.

Section 22 is a public interested exemption. This means that, in order to withhold information, I must show that the public interest in withholding is greater than the public interest in releasing it.

In terms of the public interest, it is recognised that there is public interest in there being openness and transparency within Government and that disclosing the information might increase understanding of how public money is used to support businesses in Wales.

The proposed publication date for this information has been agreed as part of normal business. The Welsh Government has committed to publishing transactions of expenditure of £25,000 on its website on a monthly basis (<http://gov.wales/about/civilservice/how-we-work/facts-figures/ourfinance/25kexpenditure1/?skip=1&lang=en>). The type of information published includes business area, payment date, description, vendor, transaction and amount. A limited number of transactions are withheld from publication based on exemptions under the Freedom of Information Act 2000. Red and Black Films has been offered a grant under the Welsh Government's Repayable Business Finance mechanism. The grant will not be paid until the company has defrayed all associated costs. I am of the opinion that publicly releasing the amount of grant funding offered at this time would cause disruption to the Welsh Government's pre-set programme in relation to this work in that the amount of grant funding offered may differ from that published as it is dependent on the company meeting the terms of the grant. If released prematurely, this may be misconstrued and be misleading to the public.

To that end, I do not think it is reasonable in all the circumstances or in the public interest to release this information prematurely. Rather, I believe the public interest would be best served if the information were released as scheduled along with all other transactions for that period. I am satisfied therefore that the balance of the public interest falls in favour of withholding the information.

Section 43 – Commercial Interests

The Section 43 exemption states that:

Information is exempt if its disclosure under the FOI Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The loan amount provided to Red and Black Films through the Welsh Government's Media Investment Budget (MIB) is conditional upon the company achieving certain key performance indicators linked to its production spend. Releasing the information would be likely to provide the company's competitors with an indication of the company's production spend and funding position which would, in turn, prejudice Red and Black Film's ability to further capitalise its business. On the matter of the applications for both funding applications, it is necessary when making such applications for companies to provide commercially sensitive details such as funding arrangements, staffing structures and other financial data about the business. This information would likely be of interest to the company's competitors as they would be able to surmise current and proposed future activities and plans. Because of this, I believe section 43 is engaged in relation to the MIB loan amount and the associated applications for the grant and MIB loan.

Section 43 is subject to the public interest test, which means that in order to engage it, it must be shown that the public interest in withholding the information is greater than the public interest in releasing it.

It is recognised that there is public interest in there being openness and transparency within Government and that disclosing the information might increase understanding of how public money is used to support businesses in Wales. However, I am of the opinion that if this information were placed in the public domain it would be likely to prejudice Red and Black Film's commercial interests and place the company at a commercial disadvantage. Whilst this information would be of interest to the company's competitors, I do not believe that it would be of interest to the wider public and would be likely to prejudice the commercial interests of the businesses concerned. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest. I also believe that there exists a public interest in ensuring that private companies can receive Welsh Government support in the knowledge that its business will not be prejudiced by the untimely disclosure of commercially sensitive information.

I believe that the balance of the public interest therefore falls in favour of withholding the MIB loan amount and the associated applications for the grant and MIB loan for this exemption.

Section 29(1)(b) – Economic Interests

The section 29(1)(b) exemption states that:

29 (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).

In the Creative sector, it is not unusual for the Welsh Government to offer a commercial loan as could be offered by any bank or other lender, as opposed, for example, to a repayable business finance loan which doesn't attract interest. In this case, the Welsh Government has effectively made an investment in Red and Black Films and it has a duty to protect its financial interests in that investment.

When information is released under the Freedom of Information Act, the information is made available to the world at large and not just to the requester. With this in mind, consideration must be given to protecting Red and Black Films from providing its competitors with an insight into their business and financial status. As stated above, releasing the information would be likely to provide the company's competitors with an indication of the company's production spend and funding position which would, in turn, prejudice Red and Black Film's ability to further capitalise and develop its business. This would have a knock-on effect on the Welsh Government's financial interests in Red and Black Films. I believe, therefore, that the section 29(1)(b) exemption is engaged.

Section 29(1)(b) is also subject to the public interest test. It is recognised that there is public interest in there being openness and transparency within Government, particularly in terms of efficiency, effectiveness and in holding Departments to account for its financial commitments. It is also recognised that disclosing the information might increase understanding of how public money is used to support businesses in Wales.

In this instance, however, whilst the information may be of interest to the company's competitors, I do not believe there is any pressing public interest in the release of this information. I am aware that the sensitivity of information may reduce over time, so that the age of the information or timing of the request may be relevant in determining whether to apply the exemption, or where the balance of public interest may lie. In this case, however, the information captured is very much current information and remains commercially sensitive, which in turn has a knock-on effect on the financial interests of the Welsh Government and the public purse, given the investment made.

I believe that the balance of the public interest therefore falls in favour of withholding the MIB loan amount for this exemption.