

Gofynnwr am / Please ask for:

Robert Edgecombe

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RJE/CCFO-242

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Dyddiad / Date:

16th April 2014

DX: 744630 Carmarthen 10

Dear Madam,

Re: Freedom of Information Request-Sale of Land adjacent to Parc Y Scarlets to Marstons Inns.

I write further to your request for information regarding the above, received on the 18th January 2014, in which you sought;

- (a) A copy of the District Valuer's Report
- (b) Any available meeting notes, minutes, internal and external emails relating directly to certain expenses incurred in the above transaction and referred to in your request

You subsequently clarified your request in relation to point (b), confirming that you were seeking any communications discussing these expenses before the sale was concluded.

Mr Tillman responded to your request on the 11th March 2014, disclosing the District Valuer's Report, but withholding the pre-completion correspondence on the grounds that disclosure would prejudice the Council's commercial interests and was therefore exempt under section 43(2) of the Freedom of Information Act ('FOIA').

You have requested an internal review of that decision.

Review decision

- (a) The requested information

I have carefully considered the correspondence which falls within the scope of your request. The correspondence consists of emails (together with attachments) passing between Councils officers, a member of the Executive Board, a representative of Llanelli Scarlets RFC, and the District Valuers Office between the 30th August 2012 and the 8th November 2012.

(b) The exemption

The exemption under section 43(2) of FOIA applies where the information relates to an organisations ability to participate competitively in a commercial activity. In this instance I am satisfied that the requested information does relate to the Council's ability to compete as a commercial landlord.

Next, it is necessary to consider whether disclosure of the requested information would prejudice that interest. I am satisfied that normally the disclosure of the requested information to the world at large would reveal to other developers looking to enter into commercial arrangements with the Council the likely approach that the Council would take on the issue of deductible expenses. I am also satisfied that normally this would prejudice the Council's commercial interests by placing it in a weaker position in any negotiations with such developers than would otherwise be the case.

However I am mindful that in this case the District Valuer's Report has already been disclosed to you, and is therefore already in the public domain. Furthermore, information relating to the deduction of expenses from the gross sale proceeds, including what sort of expenses were allowed and the values attributed to them, is also already in the public domain and has been quoted by you in your request. Accordingly, I am satisfied that the disclosure of correspondence setting out information already in the public domain will not prejudice the Council's commercial interests.

I recognise however that the requested correspondence goes further than the information currently disclosed. In particular, it sets out the parties detailed submissions on the issue, and the District Valuer's initial views. Having considered this aspect of the correspondence, I am of the view that the disclosure of this information would prejudice the Council's commercial interests by disclosing to potential developers the Council's general approach to deductible expenses, thereby giving them an advantage in future negotiations. As a commercial landlord the Council operates in a highly competitive market and, given the existence of other council owned development land in the Llanelli area, it is highly likely that disclosure will cause a degree of prejudice to the Council.

The exemption under section 43(2) is however subject to a wider public interest test. I must therefore consider whether there is a public interest in providing the requested information and weigh that interest against the degree of prejudice that is likely to be caused. There are a number of factors in favour of disclosure, including transparency in accounting for public money (in this case the sale proceeds) and ensuring openness in the way in which the Council conducts its affairs. Against this, as mentioned above, I am satisfied that some prejudice will be caused to the Council's commercial interests by disclosure. However, I believe that the prejudice will be fairly limited, given the information that is already in

the public domain. I am therefore of the view that in this case the public interest in disclosure overrides any prejudice the Council might suffer.

In preparing this response I have consulted with the both The Scarlets and The District Valuer's Office. In response, the District Valuer's Office indicated that they considered correspondence sent by them to the Council to be confidential. I have therefore considered whether that correspondence falls within the exemption in section 41 of the 2000 Act. It is for me to determine whether the disclosure of this material could give rise to an action for breach of confidence by the District Valuer's Office against the Council. Given that (a) the final report has now been published and is in the public domain (b) detailed information regarding the allowable expenses is also in the public domain (c) the transaction in question was concluded a considerable time ago and (d) there is no indication on the face of the material that it is to be treated in confidence, I am satisfied that it is unlikely that disclosure would give rise to such an action.

Accordingly I am satisfied that the exemption under sections 41 and 43(2) of FOIA should not be relied upon in this case and enclose correspondence (and enclosures) falling within the scope of the request.

Yours faithfully,


Head of Administration and Law