



Ein cyf/Our ref ATISN 10230

Llywodraeth Cymru
Welsh Government

Thomas Gallard
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6 December 2016

Dear Mr Gallard

Request for Information – ATISN 10230

Further to your request for information and subsequent complaint to the Information Commissioner and their contacting us, the Welsh Government has revisited your request and has concluded that the s43 Commercial Interests exemption was not applicable in relation to the information caught by your request. Rather, the Welsh Government believes the information should be correctly withheld under:

Section 29(1)(b) – The economy

Section 36(2)(c) – The effective conduct of public affairs.

Both of these exemptions are public interest tested. This means that in order to withhold information under them, it has to be shown that the public interest in withholding the information outweighs that in releasing it. For both exemptions, the Welsh Government recognises the general public interest in openness and transparency that the release of the information would engender.

The Welsh Government takes many decisions on a daily basis that affect the people of Wales to a greater or lesser degree. There is a public interest in knowing how the Welsh Government reaches those decisions and how it prioritises its resources across the broad areas in which it has the authority to act. Disclosure of internal discussions would allow the public to better understand how the government balances conflicting priorities, a shrinking budget, etc.

Section 29(1)(b) – the financial interests of any administration in the United Kingdom.

The prospect of disclosure of the requested information into the public domain would be likely to have a prejudicial impact on the Welsh Government's ability to achieve value for



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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.

money when entering into future negotiations with companies seeking to do business in Wales, as they would have access to information that would give them an unfair advantage in discussions. Welsh Government grants to businesses are awarded on the basis of value for money relative to the benefit to the economy. By companies having access to comparative data, it undermines the Welsh Government's ability to secure projects at lower costs. This is because companies would use the information released about financial support to their advantage and feel that they could demand the same level of investment in negotiations with the Welsh Government about bringing a project to Wales; in effect, they would be able to hold the Welsh Government to ransom.

In the past, where information about support has been shared between companies, we have experienced such difficulties in negotiations and reaching an agreement on appropriate levels of support. Should the information be published and therefore be made widely available it would be likely to prejudice the Welsh Government's financial interests.

Attracting and keeping major businesses is a very competitive market and releasing information on the amount of support provided to one business could be used by others to try to force the Welsh Government's hand to provide similar levels of funding. This would be likely to have an impact on negotiations with other companies as they would be aware of how much support we provided to company X and would target their negotiating strategy towards obtaining similar or better terms. We believe it is not in the wider public interest that we should be going into negotiations with other businesses with, effectively, one hand tied as this would not allow us to work to obtain the best return for the support provided.

Whilst I accept that, as a public body, the public will always have an interest in the work of the Welsh Government and that the release of this information would engender our willingness to be open and transparent in the way that we work, I do not believe there is any pressing public interest in the release of this financial information. The wider public interest lies, we believe, in us being able to negotiate the best deals possible to maximise the return to the Welsh economy. There is a strong public interest in a strong, viable and diverse manufacturing base across Wales, to help drive forward the socio-economic ambitions of the Welsh Government, as part of its strategy to develop a healthier and wealthier nation.

I am aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information and relates to uncompleted financial negotiations.

In conclusion, I believe that the balance of the public interest falls in favour of withholding this information at this point in time and that the information should be withheld under s29(1)(b).

Section 36(2)(c) – otherwise prejudicial to the effective conduct of public affairs.

It is in the interest of good government that there exists a secure and confidential environment in which to enter into discussions and negotiations about potential packages of support for companies interested in bringing projects to Wales for job creation purposes.

The prospect of disclosure of the requested information into the public domain would be likely to have a prejudicial impact on the Welsh Government's ability to enter into negotiations with companies, as they would have access to information that would give them an unfair advantage in those discussions. This would be likely to have an adverse effect on the Welsh Government's ability to negotiate the best possible commercial deals on future projects. It would limit the Welsh Government's ability to enter into genuine negotiations with companies, seriously impacting on our ability to secure value for money when we should be negotiating a better value for money position on investment. By companies having access to comparative data, it undermines the Welsh Government's ability to reach agreement on grants at the minimum level necessary.

In the past, where information about support has been shared between companies, we have experienced difficulties in negotiations and reaching an agreement. Should the information be published and therefore made widely available it would undermine the Welsh Government's ability to secure projects. To ensure effective conduct of public affairs, the Welsh Government must be able to negotiate best terms and value for money which is appropriate for each individual project. Therefore, the release of the information would prejudice effective conduct of public affairs.

The s36(2)(c) exemption is only engaged if in the opinion of a "qualified person" they reach the reasonable conclusion that the prejudice identified would, or would be likely to, arise from disclosure of the requested information. For the Welsh Government the First Minister is prescribed as the "qualified person". The First Minister has considered the advice provided, as set out above, and has concluded that he believes the exemption is engaged.

Whilst there is a strong public interest argument to support the view that the public should be able to see and scrutinise how government reaches the decision it makes that affects people lives or how it spends public money, I do not believe it is in the wider public interest to make public information that would be likely to harm the Welsh Governments ability to conduct its business in an effective and efficient manner. Good governance relies on decisions being made after a detailed scrutiny of all factors and possibilities. Disclosure of some information relating to those deliberations would not allow for adequate or proper scrutiny by the public as they would only have a small part of the bigger picture.

I also do not believe that disclosure of the information would be helpful in allowing the government to finalise the support package for AML. It is not good governance that part of our negotiating position is provided to the world at large, including companies with which we are in negotiations. There needs to be a private space during such negotiations where we can discuss our position, approach and potential scenario's without fear such discussions are made available to those companies with which we are in negotiations.

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

In conclusion, I believe that the balance of the public interest falls in favour of withholding this information at this time.

Full representations have been made to the Information Commissioner.

Yours sincerely

Chris Munday
Deputy Director, Business Solutions