



20th January 2017

Dear ,

ATISN 10938 – Chair’s Review of Sport Wales

I originally wrote to you on 21st December, relaying that it would take us longer than anticipated to respond to your request, and that we hoped to be in contact with you by 20th January. Your original request was for:

‘copies of all ministerial correspondence and emails relating to the review of Sport Wales, by the current Chairman Paul Thomas, between 1st November and 23rd November.’

Whilst I can confirm that the Welsh Government holds information of this description, I have concluded that the information held by Welsh Government is exempt from disclosure under Section 36 of the Freedom of Information Act 2000, specifically:

Section 36(2)(b)(ii) - inhibiting the free and frank exchange of views for the purposes of deliberation;
Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs

Full reasoning for applying these exemptions is given at Annex A.

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: 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:

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

ATISN 10938 – Consideration For and Against Disclosure of Information

Section 36 - Effective Conduct of Public Affairs

The Freedom of Information Act 2000 (FOIA) has introduced a two-stage process for considering and using the s36 exemption. Stage 1 is to ascertain whether the basic conditions for triggering the application of the exemption apply. This is the role of the 'qualified person' and in relation to the Welsh Government, the qualified person is the Welsh Ministers or the Counsel General to the Welsh Assembly Government. If the qualified person decides that the information would, or would be likely to, have the specified adverse effect(s), then the exemption is said to be engaged and Stage 2 can commence.

Stage 1 – Engagement of Exemption

The First Minister, as the 'qualified person', has agreed that Section 36(2)(b)(ii) and Section 36(2)(c) are engaged for the following reasons:

Section 36(2)(b)(ii) – free and frank exchange of views for the purpose of deliberation

Any review process depends on an environment that allows the free and frank exchange of views from a range of officials and other stakeholders in order for it to be effective. For the purposes of the current review, this includes the free and frank exchange of views that enable deliberation about the Chair's review process, likely conclusions and recommendations from the review and possible changes in process or focus arising from those conclusions without fear that they would be subject to public debate. If officials believed their views and deliberations would be made public, it is likely they would, both in the context of the ongoing Chair's review and in any similar future reviews, be more inhibited in what they say, leading to less rigorous and in-depth exploration of options and an undermining of the effectiveness of the reviews.

Officials believe that these harmful effects are relevant to the "would be likely" limb of section 36(2)(b)(ii). After due consideration, the Qualified Person was in agreement that the exemption was engaged.

Section 36 (2)(c) – *would otherwise prejudice the effective conduct of public affairs.*

Disclosure of the information requested prior to the conclusion of the current governance assurance review would be likely to prejudice the integrity of the review process in both the current review and any similar future reviews as it would remove the secure environment which allows officials to gather information from a variety of sources, including Welsh Government officials, Sport Wales officials, Sport Wales Board members and other stakeholders, to inform the review. Removing the secure environment in which officials are able to express concerns openly over the review's remit could result in this and future reviews being less robust as it would be likely to result in a reduction in the frankness and

candour of those involved in the process if they believed discussions and other information relating to the review would be made public. For the current review, release of the information at this stage would potentially expose to public scrutiny issues which could in turn prejudice the ongoing assurance review process described above.

Stage 2

Section 36 is a public interest tested exemption. This 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.

Guidance from the Information Commissioner's Office states that "information may be exempt under section 36(2)(b)(i) or (ii) if its disclosure would, or would be likely to inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The rationale for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision making by the public authority". The section 36(2)(c) exemption can be applied if releasing the information would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs, and is about the process that may be inhibited, rather than what is in the information.

It is also important to note that, regardless of the particular interests of the requestor, requests under the Freedom of Information Act are treated as 'applicant blind' and any release is made to the world at large. With that in mind, the Welsh Government acknowledges the inherent public interest in the openness and transparency that release of the information would engender. It would also demonstrate that Government officials and Ministers are fully exploring all possible avenues so that business support decisions are based on sound evidence. However, there are a number of public arguments against release of this information and they are set out below.

Section 36(2)(b) would, or would be likely to, inhibit (ii) *the free and frank exchange of views for the purposes of deliberation*

As part of the regulatory procedure, 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. This provides the Welsh Government with the space and freedom to hold such discussions and provide advice in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than appropriate.

The withheld information relates to correspondence about the Chair's Review of Sport Wales whilst the Review is still ongoing. Moreover, an Assurance Review undertaken by the Welsh Government is currently being conducted, which involves examining correspondence between the Welsh Government and Sport Wales. The release of information involved in the Chair's Review and the Assurance Review has the potential to undermine both reviews.

It is in the interest of good governance to produce the best advice available for Ministers. To fully explore all options, officials, as well as Sport Wales officials, must be able to speak and debate freely. Officials would be less likely to fully engage in the provision of advice or in exchanging views if they thought their free and frank deliberations and advice would be

revealed, and this outcome would be likely to lead to a less strenuous and in depth exploration of options and potentially less robust and effective recommendations. This would not be in the public interest. To that end, the information has been withheld under section 36(2)(b)(ii). The Welsh Government believes that the 'would be likely to' provision of the exemption is applicable.

Section 36(2)(c) - *otherwise prejudice the effective conduct of public affairs*

The release of this information would be likely to prejudice the process of handling government business. Unless officials are able to provide and consider options around material involved in ongoing Chair's Review and Assurance Review the process of handling government business would be undermined. This in turn, would be likely to prejudice the effective conduct of public affairs. The legitimacy of the current reviews, as well as any future reviews carried out by the Welsh Government, would be undermined by the release of related information before the reviews have concluded.

Accordingly, the information requested has also been withheld under Section 36(2)(c) of the Freedom of Information Act for the reasons set out above. The Welsh Government believes that the 'would be likely to' provision of the exemption is applicable.