



Ein cyf/Our ref ATISN 11263

Llywodraeth Cymru
Welsh Government

29 June 2017

Dear ,

Request for Information – ATISN 11263

I wrote to you on 10 May regarding your request for information in which you asked for:

1. The Welsh Government's financial spend to date on the Circuit of Wales project, including all grants, loans and advances.
2. A copy of the business model the Welsh Government has relied upon or is currently relying upon relating to this project.

Please accept my apologies for the delay in providing you with this response.

I confirm we hold information captured by your request. I have concluded that the information you have requested for your first question is exempt from disclosure under Section 21 of the Freedom of Information Act 2000, information otherwise available. This information is available to view at https://www.wao.gov.uk/system/files/publications/circuit-of-wales-eng-2017_0.pdf .

The information you have requested in your second question is the formal business plan for the proposed Circuit of Wales project. I have concluded that this information is exempt from disclosure under Section 41, Information provided in confidence and Section 43, Commercial Interests, of the Freedom of Information Act, 2000. Full reasoning for applying these exemptions is appended to this letter.

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.



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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 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 11263 – Application of Exemptions

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Sections 41 and 43(2) of the Freedom of Information Act 2000 (FoIA).

Section 41 – Information provided in Confidence

This exemption states that:

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

In terms of the criteria set out under the exemption, the Welsh Government can confirm that the information was obtained from other individuals and that disclosure of it would constitute an actionable breach of confidence. Whilst section 41 is an absolute exemption and not subject to the statutory public interest test, the common law concept of 'confidential' contains its own inherent tests that need to be satisfied. These were identified in the leading case of *Coco v A N Clark (Engineers) Ltd* (ChD 1968) and I consider these below.

a) The information has the necessary 'quality of confidence'.

The formal business plan for the Circuit of Wales project, as with other similarly commercially sensitive information, was provided to the Welsh Government in confidence and without the expectation that any of the information would be placed in the public domain. Assurances were provided to the company that the information received would be held in confidence. To that end, I believe the information has the necessary 'quality of confidence'.

b) The information was communicated in circumstances importing an obligation of confidence.

An obligation of confidence can be expressed explicitly or implicitly. In working with the Welsh Government in relation to business support activity, the company provided sensitive information with the expectation that its confidence would be respected.

c) Unauthorised disclosure could cause a specific detriment, to either the party that provided it or any other party.

As stated above, the information contained in the business plan was provided in confidence. If this was released despite the expectation of confidentiality, this could cause reputational damage to the parties involved. It could also cause damage to the Welsh Government, as existing and future relationships could lose faith in our ability to respect confidence.

Further, the Welsh Government recognises that the law of confidence contains its own built-in public interest test which works in the opposite way to that normally associated with exemptions under the FOI Act, in that sufficient public interest in disclosure is a defence to any charges of breach of confidence.

The Welsh Government is therefore of the opinion that release of the business plan would constitute an actionable breach of confidence and that would not be in the public interest.

Section 43(2) – Commercial Interests

This exemption states that information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it. I have therefore given consideration to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Public Interest Test

I recognise the general public interest in openness and transparency and that releasing the business plan of the proposed Circuit of Wales project would help the public gain a better understanding of the decisions made by Government. It is also recognised that there is a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

The formal business plan for the proposed Circuit of Wales project contains commercially sensitive information on the proposed revenue, net earnings forecasts and funding strategy for the proposed Circuit of Wales. It documents detailed pricing and event strategy that would be likely, if released, materially undermine the negotiating strategy of the company as well as introducing severe financial and reputational risk to the company. It contains unique operating and brand initiatives that are proprietary to Circuit of Wales and form part of the intellectual property of the company. Also in the plan is information on the company's commercially sensitive relationships with other third party companies and complex financial information that is designed for the experienced Board, Banks and shareholders to support funding.

The business plan is not written nor meant for consumption by the general public. All of the information described above is commercially sensitive to the Circuit of Wales. Disclosure would be likely to cause the company commercial disadvantage against its competitors because it would place into the public domain 'first mover' information which would be likely used by the Circuit's competitors. The Circuit's competitors would not otherwise have access to this information. It would be likely that some of the statements and information contained in the document may be taken out of context and used against the company, as has been seen in recent media activity. This in turn would be likely to cause reputational damage to the directors and shareholders of the

company and reduce the confidence over the project putting at risk the extensive development investment including the loan funding by Welsh Government.

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 therefore falls in favour of withholding the business plan for the proposed Circuit of Wales project.