



29 September 2017

Dear ,

Request for Information – ATISN 11520

I wrote to you on 4 September regarding your request. You asked for information relating to the activities of Visit Wales. I can confirm that we hold some information relating to your request which can be seen below. In respect of your request to receive copies of invoices received, these are available in hard copy so would be grateful if you could confirm a postal address for these to be sent to.

In relation to question 1 -

- a) The cost since your last request to the date when your most recent request was received is £12,076 + VAT. (8 August 2016 to 31 August 2017) Copies of invoices held have been enclosed.
- b) We do not hold any information relating to expected, budgeted or projected costs.
- c) This information is exempt from disclosure under section 21 of the Freedom of Information (FOIA) – information available to the applicant by other means. Please use the following link:
<http://gov.wales/about/foi/responses/2016/?lang=en>.
- d) In relation to question 1(d), I am interpreting “documents, minutes or meeting notes or other evidence relating to the above” requested as relating to Question 1 – i.e. information held which relates to the instruction between the Welsh Government and Geldards LLP “to advise on the dispute between it and Pablo Star Ltd and Pablo Star Media Ltd”.

I can confirm that the Welsh Government holds information of this description; however, I have concluded that it is exempt from disclosure under Section 42 of the FOIA – Legal Professional Privilege. Full reasoning for applying this exemption can be found at Annex 1 of this letter.

In relation to question 2 –



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- a) 11 November, 2016.
- b) 11 November 2016.
- c) This information is exempt from disclosure under section 21 of the Freedom of Information (FOIA) – information available to the applicant by other means. Please use the following link:
<http://gov.wales/about/foi/responses/2016/?lang=en>
- d) I am interpreting “documents, minutes or meeting notes or other evidence relating to the above” requested as relating to Question 2 – i.e. information held which relates to the instruction between the Welsh Government and Geldards LLP “to advise on a matter in the Companies Court London involving Mr Haydn Price and Pablo Star Ltd”.

I can confirm that the Welsh Government holds information of this description; however, I have concluded that it is exempt from disclosure under Section 42 of the FOIA – Legal Professional Privilege. Full reasoning for applying this exemption can be found at Annex 1 of this letter.

- e) The cost since your last request to the date when your most recent request was received is £39,472 + VAT. (8 August 2016 to 31 August 2017) Copies of invoices held have been enclosed.
- f) We do not hold any information relating to expected, budgeted or projected costs.

In relation to question 3 –

- a) The cost since your last request to the date when your most recent request was received is €24,441.48. (8 August 2016 to 31 August 2017) Copies of invoices held have been enclosed.
- b) We do not hold any information relating to expected, budgeted or projected costs.

In relation to question 4 –

- a) The cost since your last request to the date when your most recent request was received is €2,846.95. (8 August 2016 to 31 August 2017) Copies of invoices held have been enclosed.
- b) We do not hold any information relating to expected, budgeted or projected costs.
- c) Whilst not wishing to confirm or deny whether the Welsh Government holds information of this description, if we did it would be exempt from release under Section 40(2) of the FOIA – Personal data. Full reasoning for applying this exemption can be seen at Annex 1.

In relation to question 5 –

- a) The cost since your last request to the date when your most recent request was received is \$2,326.21. (8 August 2016 to 31 August 2017) Copies of invoices held have been enclosed.
- b) We do not hold any information relating to expected, budgeted or projected costs.

- c) The Welsh Government does not hold any information of this description; the Welsh Government is not, either directly or indirectly, paying the American legal bills for any other party (other than the Welsh Government) in any matter in America.

In relation to question 6 –

- a) “americas.visitwales.com/canada” was live August 2011 – October 2014. After October 2014, “americas.visitwales.com/canada” was redirected to “americas.visitwales.com”.

- b) “americas.visitwales.com/canada” – between 1st Jan 2014 and 1st October 2014: Total Sessions: 5,145; Sessions from Canada: 3,669

Split by province:

Ontario	1823
British Columbia	580
Alberta	451
Quebec	285
Manitoba	141
Nova Scotia	140
Saskatchewan	93
New Brunswick	73
Newfoundland and Labrador	56
Prince Edward Island	17
Northwest Territories	4
Yukon Territory	4
Not Set	2

- c) We do not hold this information.

- d) I explained to you in my letter of 9 September that my initial estimate suggested it would be very time consuming to deal with and I asked you to refine your request. Because I have not received any further correspondence from you on this matter, I have considered the question as originally submitted. In doing so, I have reached the conclusion that it will cost more than the appropriate limit established in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to consider your request. The appropriate limit specified for central government is £600. When calculating whether or not your request exceeds appropriate limit, I am allowed to consider the time it is likely to take to establish if we hold the information, locate the information, retrieve the information and extract it. If these tasks are estimated to take more than 24 hours of working time, the limit will have been exceeded.

You have requested information over a 3 year period which will have involved many different teams, different departments across the Welsh Government and involving current and former staff, all of whose records would have to be consulted, where available. As explained in my letter of 9 September, the broad phrasing where you cite ‘details of any business, commercial or other activity in Canada’, makes the search very difficult and very time consuming to deal with. An electronic search for the information within the parameters you have given will return many records, most of which will not be relevant to your

request, if at all. An initial scoping exercise was undertaken by a member of staff on our Welsh Government database, iShare. This is the corporate repository for the majority of information created and received by Welsh Government Officials in the course of their duties that must be retained for business or historical purposes.

A simple search on iShare using the words “business, commercial activity Canada 2013-15” identified 2972 documents and not all documents relating to your request will be called that therefore other searches would be required.

At an estimate of taking 30 seconds to investigate each document to see if it contains any relevant information and to then extract it would take in excess of 24 hrs for this exercise alone. (Additional time to undertake other *iShare* searches including email correspondence for relevant staff members will also be taken into consideration.) Because this exceeds the appropriate limit established in the Freedom of Information and Data Protection (Appropriate limit and Fees) Regulations 2004, I have decided not to process that part of your request. You may wish to refine your request by narrowing its scope by being more specific about what information you particularly wish to obtain, including any dates or period of time relevant to the information required. If you do refine your request in this way, this will be treated as a new request, please be as specific and focused as possible.

- e) This information is exempt from disclosure under section 21 of the Freedom of Information (FOIA) – information available to the applicant by other means. Please use the following links: : www.visitbritain.org and <https://www.ons.gov.uk/peoplepopulationandcommunity/leisureandtourism>

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 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

Section 42 – Legal Professional Privilege.

This exemption states (inter alia):

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the “dominant” (main) purpose of litigation. The information in question concerns confidential communications made for the purpose of providing or obtaining legal advice or for lawyers to use in preparing a case for litigation.

The section 42 exemption is qualified, which means that it is subject to a public interest test. That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission and DTI* [EA/2005/0023] in which the tribunal, on the subject of LPP said:

"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...".

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK Government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege.

Moreover, disclosure of legal advice has a significant potential to prejudice the governments' ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.

Section 40(2)

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as: *“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”*.

We have concluded that, in this instance, the information relating to the personal data of civil servant officials (below Senior Civil Service level) and names/contact details of stakeholders and contractors amounts to third party personal data.

Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that the information highlighted falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

- 1 Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.4) states:

If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

Our analysis of the ICO’s key considerations in assessing ‘fairness’, as set out in the Guidance, are below

- *Whether the information is sensitive personal data and the possible consequences of disclosure on the individual ;*
- *The reasonable expectations of the individual, taking into account: their expectations both at the time the information was collected and at the time of*

the request; the nature of the information itself; the circumstances in which the information was obtained; whether the information has been or remains in the public domain; and the FOIA principles of transparency and accountability;

- *Whether there is any legitimate interest in the public or the requester having access to the information and the balance between this and the rights and freedoms of the individuals who are the data subjects.*

In this instance, because the individuals would have had no expectation that their personal data would be released into the public domain, we believe that release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under Section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to public tests.