



Ein cyf/Our ref ATISN 11843

19 January 2018

Dear ,

Request for Information – ATISN 11843

Thank you for your recent request for information regarding the Wales and Borders franchise. You have asked for

1. The franchise specification issued by the Welsh Government and/or Transport for Wales in 2017 to the companies which were bidding
2. Any other documents issued by the Welsh Government and/or Transport for Wales as part of the invitation by the Welsh Government and/or TfW for bidders to submit their final tenders for the franchise.

I can confirm that we hold the information you have requested. However, I have concluded that for the first question that the information is exempt from disclosure under Section 29 (the economy) and Section 43 (commercial interests) of the Freedom of Information Act 2000. Full reasoning for applying these exemptions can be seen at Annex A.

For your second question, I have concluded 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.

The broad phrasing of your request, where you cite 'any documents, makes the search very difficult and very time consuming to deal with.



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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 .

The position remains that there is an exceptionally high volume of documentation regarding rail services and the procurement process. 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 "rail invitation to submit final tender" identified over 22,591 documents and not all documents relating to your request will be called that therefore other searches would be required. At an estimate of taking 60 seconds to investigate each document to see if it contains any relevant information and to then extract it would take far 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 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. For example, you may wish us to search for information relating to a certain aspect of the project and within a certain time frame. 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.

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

Nathan Barnhouse - Rail Programme Director

ANNEX A

ATISN 11843 – Consideration For and Against Disclosure of Information

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Sections 29, the economy and 43(2), commercial interests, of the Freedom of Information Act 2000 (FOIA).

Both are qualified (public interest tested) exemptions. This means that in order to engage them, the Welsh Government must show that the public interest in withholding the information is greater than the public interest in releasing it. Consideration has therefore been given 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, the wider effects of disclosure have been considered rather than any personal interest you may have in being provided with the information.

Section 29(1)(a)- the economy

This exemption states:

29.—(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the economic interests of the United Kingdom or of any part of the United Kingdom,

Prejudice Test

Releasing the information at this time would be likely to affect the Welsh economy. If the Welsh Government were to release the information before the final award of the 2018 rail services contract, it would be likely to prejudice the economy of Wales because the bidders would likely be distracted from developing bids against our requirements and would be likely to inaccurately assess risk exposure.

Public interest arguments in favour of release

It is recognised that there is public interest in there being openness and transparency within Government, particularly in terms of efficiency, effectiveness and in holding spending Departments to account. It is also recognised that disclosing the information might increase understanding of how public money is used to award the 2018 rail services contract.

Public interest arguments in favour of withholding

The information captured by your request includes detailed, commercially sensitive information on all aspects of delivering a successful rail franchise in 2018. The economy of Wales is interlinked with the success of this tendering exercise and its significance and subsequent success cannot be underestimated in this regard. The Welsh Government does not believe it would be in the public interest to disclose the invitation to tender document at this time as to do so is likely to adversely affect the preparation of bids by the three remaining bidders, each of whom are negotiating their own distinct cases for how they will deliver ambitious rail service requirements for passengers across Wales and the Borders. Disclosure of the information would also be likely to result in companies involved

with the bidding process being the subject of public debate which would also be likely to prejudice the complex assessment of risk over the lifetime of the contract by each bidder's owning group as part of their decision to submit a bid and enter into a contract. This in turn would be likely to put at risk the economic interests of Wales and the public purse

Whilst it is recognised that, as a general rule, the sensitivity of information is likely to change over time, in this case the information captured is very much current information which we accept that over time may become less commercially sensitive.

In recognising the public interest in the procurement requirements, Transport for Wales (TfW) has produced and published a document that contains information on the procurement and our requirements for rail services.

The Welsh Government is therefore of the view that the public interest is best served by withholding the information requested in order to protect the wider economic interests of Wales and ensuring the tendering exercise is successfully completed without interference.

Section 43(2) – commercial interests

This exemption states:

(2) *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).*

Prejudice Test

Revealing the Invitation To Tender document would be likely to prejudice TfW's commercial interests should it be disclosed at this point in time. TfW have a legitimate commercial interest in ensuring that the procurement exercise proceeds to the agreed timetable and delivers best value. To release the information at this time would be likely to harm the procurement process by, in particular, harming TfW's ability to secure value for money from the procurement if bidders have inaccurately assessed risk exposure.

Public interest arguments in favour of release

There is a public interest in openness and transparency within government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely. Given that this is a very large procurement exercise for a vital public service which will involve the expenditure of significant sums of public money, there is clearly a strong public interest in understanding the process for awarding the franchise and allowing scrutiny of the project as a whole.

Public interest arguments in favour of withholding

The disclosure at this time of very detailed and commercially sensitive information whilst the procurement exercise remains on-going would be likely to cause prejudice to TfW's commercial interests. To disclose the information would be likely to mean TfW has to provide additional assurances to bidders should they inaccurately assess risk exposure, which would be likely to reduce TfW's ability to secure value for money from the contract.

There is an equally significant public interest in ensuring that the procurement exercise is able to continue unimpeded given the sums of public money involved.

The Welsh Government has committed to publish as much procurement documentation as it is able to at the appropriate time. It is believed, therefore, that the public interest is satisfied by the amount of information already in the public domain and what is intended for future publication.

It is the view of the Welsh Government that whilst the procurement exercise remains live, then the balance of public interest is likely to favour withholding the information. This balance may change over time.