



Ein cyf/Our ref ATISN 12101

18 April 2018

Dear ,

Request for Information – ATISN 12101

I wrote to you regarding your request for information on 23 February. You asked for copies of all correspondence between Welsh Government Cabinet Secretaries, Ministers and Officials and Newport City Council and other bodies in relation to the Newport Wales Marathon due to take place on 29 April 2018.

I can confirm that we hold information relating to your request, some of which is enclosed.

I have concluded that some of the information is exempt from disclosure under the following exemptions of the Freedom of Information Act 2000:

- Section 29(1)(b), the economy
- Section 40, personal data
- Section 43, prejudice to commercial interests

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



E&T FOI Team
Welsh Government
Treforest - QED Centre
Main Avenue
Treforest Industrial Estate
Ponty pridd
CF37 5YR

FOI.EconomyandTransport@gov.wales
RhyddidGwyb.EconomiaThrafnidiaeth@llyw.cy
[mru](#)

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 .

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

Gwilym Evans
Head of Major Events

ATISN 11201 – CONSIDERATION FOR AND AGAINST DISCLOSURE OF INFORMATION

Section 29(1)(b) – the economy

This exemption states:

*29 (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
(b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).*

Prejudice Test

Every event seeking funding has to go through a rigorous assessment process. Different events have different levels of economic impact or international profile and funding is therefore dependant on this and other factors such as delivery of impacts for example volunteers, training and other skills which, in turn help to create an environment which stimulates and assists new enterprise and growth.

I believe that releasing the funding amount would be likely to create a level of expectation by other festivals/event organisers in believing they would be entitled to an equal or similar amount of funding. This would be likely to prejudice any future negotiations between the Welsh Government and other event organisers as each event is different and each application is based on merit. I believe this, in turn, would be likely to prejudice the financial interests of the Welsh Government as it would prejudice our negotiating position and our efforts to ensure best value for the Welsh pound.

Public Interest For Disclosure

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.

Public Interest Against Disclosure

Disclosing the amount of funding would provide competitors with access to a level of information not otherwise available to them. This would be likely to enable those competitors to obtain an advantage in negotiations to host these type of events. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest.

If this information were placed in the public domain, it would be likely to harm and compromise the Welsh Government's future negotiating position with regard to securing future events and undermine the trust and confidence we have built up with event organisers over many years of successfully hosting these type of events. This would in turn be likely to inhibit Welsh Government efforts in attracting other major events and therefore work against the wider objective of helping businesses grow and create jobs for

the people of Wales. Whilst this information may be of interest to our competitors and potential future projects and partners, I do not believe that it would be in the public interest to prejudice the public purse and the stated benefits that major events bring to the economy by releasing the information.

Whilst I accept that, as a public body, the public will always have an interest in the work of the Welsh Government and that 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 information. I do not believe it is in the wider public interest to prejudice the financial interests of the Welsh Government and our efforts to obtain value for money in future negotiations using the public purse.

I am satisfied, therefore, that releasing the information would be likely to prejudice economic interests as defined by this exemption. Whilst the information may be of interest to those working in direct competition, I cannot see any wider public interest in releasing the information. I have concluded therefore that the public interest in withholding the information outweighs that in releasing it.

Section 40 – Personal Data

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”.

I have concluded that, in this instance, the withheld information within the Departure Request 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. I consider the principle being most relevant in this instance as being the first.

The first data protection principle 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.

I consider that the withheld information in relation to names and contact details 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 presented below.

Some of the withheld information amounts to the personal data of civil servants and employees of an organisation who do not have public facing roles and would not expect their names to be released in this context. There are set procedures in place for members of the public to contact both the Welsh Government and local authorities using generic contact mechanisms. Having such systems in place means members of the public do not make direct contact with officials and avoids those officials dealing with potentially unnecessary and disruptive correspondence. In this context, the civil servants were liaising with the organisation as part of their normal course of business. In doing so, there would be no expectation that their personal details would at any time be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information, and we do not see any legitimate reason why the names of the officials or company employees need to be placed in the public domain. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle. Despite withholding information of individual details, it remains clear which organisation was involved in the discussions you have described, which is the primary factor.

For that reason, I believe the information should be withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

Section 43(2) – commercial interests

This exemption relates to two e-mails between the Welsh Government and Welsh Athletics/Run 4 Wales.

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 e-mail correspondence would be likely to affect Run 4 Wales' relationship with the Great Run Company and subsequently the Welsh Government's relationship with Run 4 Wales. Run 4 Wales has a legitimate commercial interest in ensuring that it has a secure and solid relationship with the Great Run Company, as it will likely wish to host similar events in the future for and/or on behalf of the Great Run Company. To release the information at this time would be likely to harm Run 4 Wales' commercial standing in this regard with the Great Run Company.

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 negotiates arrangements for large public events such as the Newport Wales Marathon. Given this is a large event which will involve the expenditure of significant public support, there is clearly a strong public interest in understanding the arrangements and negotiations behind the event allowing scrutiny of the event as a whole.

Public interest arguments in favour of withholding

Disclosure of the e-mail correspondence, particularly whilst the event has not yet occurred, would be likely to cause prejudice to Run 4 Wales' commercial interests. To disclose the information would be likely to mean Run 4 Wales has to provide additional assurances to its stakeholders, which would be likely to reduce Run 4 Wales' commercial integrity. There is an equal public interest in ensuring that the event is able to continue unimpeded given the public resources involved.

It is the view of the Welsh Government that the balance of public interest is likely to favour withholding the information. This balance may change over time.