



Eich cyf/Your ref:
Ein cyf/Our ref: ATISN 13202

25 July 2019

Dear

ATISN 13202: Car park funding Six Bells Primary School, NP13 2ND

Thank you for your request which I received on 3 June asking for:

- Correspondence, plans and meeting notes in respect of Blaenau Gwent Council's proposal for an extension to a car park at a school that is being built in Six Bells.

I wrote to you on 1 July and enclosed information captured under this request. I also advised that the Welsh Government believed that the following information may be exempt from disclosure:

| Information being withheld | Section number and exemption name |
|---|---|
| Minutes of Education Investment Panel meeting | <ul style="list-style-type: none">• Section 36(2)(b)(i) – Free and frank provision of advice• Section 36(2) (c) – would otherwise prejudice the effective conduct of public affairs. |
| Paper of Education Investment Panel meeting | <ul style="list-style-type: none">• Section 36(2)(b)(i) – Free and frank provision of advice• Section 36(2) (c) – would otherwise prejudice the effective conduct of public affairs. |
| Contractor quote | <ul style="list-style-type: none">• Section 43 Commercial interests |

The Welsh Government have decided that the information described above list is exempt from disclosure under the sections 36 and 43 of the Freedom of Information Act and is therefore withheld.

The reasons for applying these exemptions are set out in full 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 Email: FreedomOfInformationOfficer@gov.wales

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

Annex A

| Information being withheld | Section number and exemption name |
|---|---|
| <ul style="list-style-type: none">• Contractor quote | <ul style="list-style-type: none">• Section 43 – Commercial interests |
| <ul style="list-style-type: none">• Minutes of Education Investment Panel meeting | <ul style="list-style-type: none">• Section 36(2)(b)(i) – Free and frank provision of advice• Section 36(2) (c) – would otherwise prejudice the effective conduct of public affairs. |
| <ul style="list-style-type: none">• Paper of Education Investment Panel meeting | <ul style="list-style-type: none">• Section 36(2)(b)(i) – Free and frank provision of advice• Section 36(2) (c) – would otherwise prejudice the effective conduct of public affairs. |

Engagement of sections 36(2)(b)(ii) and 36(2)(c) of the Freedom of Information Act 2000

The 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 Counsel General acts as that “qualified person”. 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 2 considers the statutory public interest test before deciding whether to withhold or release the information

Stage 1 – Engagement of Exemption

The Welsh Government believes that both of these exemptions are engaged in relation to minutes and papers relating to the assessment of Blaenau Gwent’s bid under the 21st Century Schools and Colleges Programme by the Education Directorate’s Investment Panel and should be exempt from disclosure.

The minutes detail discussions over the quality of Blaenau Gwent’s bid as part of the assessment process under the 21st Century Schools and Colleges Programme and captures a range of sensitive views expressed between members of the Investment Panel. In the normal fashion the bid was submitted to officials within the Welsh Government who are currently assessing their suitability for funding. We believe that to release the minutes at this point would likely damage this process with officials being forced to be more guarded in what they say. Assessment by officials only forms part of the overall process. In addition, they will submit their views to the Minister for Education for final approval. If their assessment has been compromised in anyway there is a significant risk that this may also damage the Minister’s ability to make a clear decision based on comprehensive advice by officials.

The Counsel General, as the ‘qualified person’, has agreed that s36(2)(b)(ii) and s36(2)(c) are engaged for the above reasons.

Stage 2 – Public Interest Test

In order to satisfy the public interest test in relation to the exemption, it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to outweigh the public interest arguments in favour of release.

Public interest arguments in favour of disclosure

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

Section 36(2)(c) – would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

The Welsh Government acknowledges the inherent public interest in openness and transparency that release of this information would engender. Officials recognise there is a public interest in disclosing information on the views expressed between officials regarding the assessment of Blaenau Gwent's bid. This could allow for a greater public understanding of how the assessment process develops and how the recommendations of the Investment Panel are reached, promoting open government. To release the requested information could also increase the level of transparency around the development of the bids and might promote a deeper understanding amongst the general public of the 21st Century Schools and Colleges Programme. In this sense, the public could be able to understand how officials are providing a service to them by making their work more transparent and allowing the public to form an opinion on the quality of that service.

Public interest arguments in favour of withholding

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

Discussions at the Investment Panel inform the advice that is ultimately submitted to the Minister for Education to assist her in his decision on whether bids will be successful.

During this deliberative process, it is important that those involved are able to express themselves openly so there can be a full consideration of different points of view before any final decision is reached. This can include opinions over sensitive areas such as the quality of bids, their factual accuracy and the evidence on which they are based. Participants expect to be able to express themselves openly so all views can be taken into account without fear they will be exposed to public scrutiny.

To make these opinions public knowledge could inhibit the open expression of views during future meetings. For example, if officials can no longer be assured their opinions will remain private they may seek to be more circumspect in what they express for fear of being misinterpreted before a final decision is made. This could lead to a narrower range of discussions taking place between participants as they seek to be more guarded in what they express. To that end, officials do not believe it would be in the public interest to potentially compromise such discussions.

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

Consideration of bids submitted by Blaenau Gwent under the 21st Century Schools and Colleges Programme remain a live issue as they continue to be considered by both the Education Directorate's Investment Panel.

To perform their duties effectively during this process, members of the Investment Panel, as well as the Minister for Education, all require a 'safe space' in which to consider the bids away from public interference. The officials involved have an important role to perform to ensure that the bids submitted to them are assessed fully and impartially in the public interest so that funding is allocated to proposals that represent best value for money. To compromise this therefore, would act against the public interest.

Balance of public interest test

On balance, officials consider that the public interest in favour of withholding the information outweighs the public interest in disclosure for the reasons set out above. Because of this, the information has been withheld under sections 36(2)(b)(ii) and 36(2)(c) of the Freedom of Information Act 2000.

Engagement of section 43 of the Freedom of Information Act

The information outlines the initial cost projections of options for building the additional car parking. These figures are only estimated costs at this stage and have been calculated on the high side to ensure the project falls within budget. The Welsh Government believes the initial contractor quote should be exempt from disclosure. If the figures were to be placed into the public domain at this point in time, officials believe those companies submitting bids are likely to pitch their bids towards the maximum of the estimated projected costs rather than submit more competitive bids. Officials believe this would be likely to damage the commercially competitive interests of Blaenau Gwent CBC in negotiating a contract for the building of the additional car parking at Six Bells Primary School and that would be likely to result in the Council paying more money than would otherwise have been necessary.

Public Interest Test

Public interest arguments in favour of disclosure

The Welsh Government recognises the public interest in disclosing the requested information. Disclosure now could allow the public to see, at an early stage, what the likely costs of building the faith school will be. Based on this, they could make an initial assessment of whether the school represents value for money to Blaenau Gwent and the specific community in which it is built. Releasing the projected figures could also allow the public to better understand how Blaenau Gwent Council manages its budgets and sets aside funding for significant projects such as building the additional car parking. As a result, disclosure could promote greater transparency and accountability around the finances of Blaenau Gwent Council and potentially allow members of the public to challenge the proposed cost of this project.

Public interest arguments in favour of withholding

Contractors subsequently invited to tender for the work could be influenced by the early, high level assessed costs attributed to the shortlisted options and consequently pitch tenders toward what may be considered as available funding. This could result in returned prices not being as competitive as they might otherwise be. In our opinion this would be likely to compromise the commercial competitiveness of Blaenau Gwent Council as it will give private companies a competitive advantage in negotiating costs with the Council.

As bids from private companies are received by the Council it will be in the public interest for them to maintain a strong negotiating position in order to obtain the most competitive price possible. If companies pitch their bids towards the projected costs which, by definition, are only preliminary estimates, then this will start the bidding process at an exaggeratedly high level. If a contractor therefore, knew that a proposal was budgeted at a certain amount then during any bidding process they would be likely to pitch their return tender towards this exact budget in order to maximise their potential profit, negating a level of commercial competition. Blaenau Gwent Council needed to set the original costs at a higher level to ensure they did not run over budget but anticipate negotiating a more competitive price for the work from tenders. To release the figures now would be likely to compromise this process and lead to the Council paying more money than it needed to, compromising its commercial competitiveness.

We believe that it is in the wider public interest that Blaenau Gwent CBC are able to undertake the relevant tender exercise without compromising their ability to obtain the best value for money from any contract awarded. The public purse is, we believed, best served by ensuring that those vying for the contract produce a bid that is based around their calculations as the cost they could undertake the job for, rather than targeting their bid towards what they know the authority has earmarked for the project.

Balance of public interest test

On balance, officials consider that the public interest in favour of withholding the information outweighs the public interest in disclosure for the reasons set out above.