



Ein cyf/Our ref ATISN 13432

24 October 2019

Dear

Request for Information – ATISN 13432

I wrote to you on 1 October regarding your request for information. You asked for:

- 1. Copies of the Welsh Assembly Grant applications (failed and successful) for Fields Data Recovery UK, Fields Associates Investments Ltd, Rapid Data Recovery Ltd, Daten Phoenix Ltd, UK Digital Solutions Ltd, Action Direct (UK) Ltd, Quickie Divorce Ltd.**

I confirm we hold information caught by your request. I have concluded, however, that all of the information we hold is exempt from disclosure under Section 41, information provided in confidence and Section 43(2), prejudice to commercial interests, of the Freedom of Information Act 2000 (FoIA). Some of the information is also personal information and as such it has been withheld under Section 40 of the FoIA. My reasoning for withholding the information are given at Annex 1.

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: Freedom.ofinformation@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:



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

FOI.EconomyandTransport@gov.wales.

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 .

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 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (FOIA), together with the conditions in section 40(3)(a)(i) or 40(3)(b), provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 1998 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, some of the information contained within the information caught by your request contains third party personal data. Specifically, this relates to names of individuals, their e-mail addresses and direct telephone numbers. There is also salary information, details of clients and CVs of key personnel.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. The Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate Interest Test

The Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication in order to follow the flow of that communication. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand those communications. The individuals concerned are representing their respective organisations rather than themselves as individuals. As such it is irrelevant who is representing any particular organisation. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. It is straight forward, even when withholding the personal data, to follow the flow and context of the information. As such we do not believe it is necessary to disclose the personal data to understand the information.

Nor do we believe it is necessary to disclose the personal data in order to allow members of the public to contribute to this, or future discussions on this or any other matter. There are mechanisms by which the public can contact the relevant organisations such as generic mailboxes and telephone numbers.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the identity of the individuals, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

Section 41 – Information Provided in Confidence

Section 41 sets out an exemption from the right to know where the information requested was provided to the public authority in confidence and disclosure of the information would give rise to an actionable breach of confidence.

Section 41 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.*

The information caught by your request contains highly sensitive and detailed commercial and financial information regarding the corporate strategy of Fields Group Limited. As such the information is neither trivial nor is it publicly accessible. The information was provided to the Welsh Government in confidence as part of the grant application process. It was provided in good faith and on the explicit understanding that access to that information would be closely restricted. Fields Group Limited has not provided consent for us to make this information available to any party who asks for it.

Consequently I believe that the information is owed a legal duty of confidence and that disclosure without consent would result in an actionable breach of that confidence.

Section 41 is an absolute exemption and is not, therefore, subject to the public interest test.

Section 43(2) – Commercial Interests

This exemption states that:

(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).

According to the Code of Practice issued by the Lord Chancellor under Section 45 of the FOIA, public authorities must consult anyone whose interests may be affected by disclosure of information. We have therefore consulted with Fields Group Ltd. to seek its views on releasing the information. The company provided its views as to why releasing the information would be likely to prejudice the company. These views have been taken into consideration in reaching the decision to withhold the information.

As identified above, the information contains highly sensitive and detailed commercial and financial information regarding the corporate strategy of Fields Group Limited. It includes business plans and financial forecasts together with its views on its strategic positioning within the market place. This information is not available to anyone other than the company itself. If this information was to be placed into the public arena, I believe it would be likely to prejudice the ability of Fields Group Ltd. to fairly engage in a commercial arena as it would enable the company's competitors to gain an unfair advantage.

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 arguments in favour of release

The Welsh Government acknowledges 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. It is also recognised that the public have a right to know that the Welsh Government is investing public money wisely and that the awarding of public funding is done fairly and within the rules.

Public interest arguments in favour of withholding

The information is commercially sensitive information which would be likely used to the advantage of the company's competitors. Fields Group Ltd. is still actively competing in an active market place to win business. Disclosure of detailed financial and other commercial information including marketing strategies and budgeting would likely provide the company's competitors with valuable commercial information that would provide them with a competitive advantage over Fields Group Ltd. and which would be likely prejudicial to the future commercial activities of Fields Group Ltd.

Whilst the information may be of interest to those working in direct competition with Fields Group Ltd. I cannot see any wider public interest in releasing the information. As such, I have concluded that the public interest in withholding the information outweighs that in releasing it.