



Llywodraeth Cymru
Welsh Government

Our ref ATISN 13475

4 December 2019

Dear

Request for Information – ATISN 13475

I wrote to you on 8 October and 5 November regarding your recent request for information. I'm sorry for the delay in providing you with this response. You asked for:

1. The total sum of money the Welsh Government has granted to Hamlyn Williams Limited and its related trading entities.
2. The terms and conditions the Welsh Government has agreed with the company Hamlyn Williams Limited and its related trading entities in order for the company to receive the Welsh Government funding.

I can confirm we hold information captured by your request. For question 1, funding of up to £552,000 was awarded to Hamlyn Williams Ltd.

The information we hold in relation to question 2 is the individual offer letter and the standard terms and conditions which accompanied the offer of the grant. A copy of that information is appended at Annex A. I have concluded however, that some of the information should be withheld from disclosure under Section 40, personal information and Section 43(2), commercial interests, of the Freedom of Information Act 2000. Full reasoning for applying these exemptions is given at Annex B 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



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.

FreedomOfInformationOfficer@wales.gsi.gov.uk.

Please remember to quote the ATISN reference number.

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

Telephone: 01625 545 745 or 0303 123 1113

Website: www.ico.gov.uk

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Freedom of Information Act 2000: 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, the information requested contains third party personal data. Specifically, this relates to the name and telephone number of a junior Welsh Government official, the name and signature of a Welsh Government official; and the personal mobile number and email address of the Chief Executive Officer (CEO) of Hamlyn Williams Limited.

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:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **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. The Legitimate Interest Test

The Welsh Government cannot identify any legitimate interest in you or the public receiving the personal data captured by your request. The personal data includes the

name and telephone number of a junior Welsh Government official, the name and signature of a Welsh Government official; and the personal mobile telephone number and email address of the CEO of Hamlyn Williams Ltd.

2. The Necessity Test

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. The Welsh Government officials are not senior staff members and would therefore not expect their names, signatures or telephone numbers to be released into the public domain.

With regards to the personal mobile number and email address of the CEO of Hamlyn Williams Ltd, there are other mechanisms by which the public can make contact such as through the company's generic email address, therefore it is not necessary to disclose the personal data.

Withholding this information does not impact on the ability to read and understand the document.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the names of the Welsh Government officials or the mobile telephone number and email address of the Hamlyn Williams Ltd employee.

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 43 (2) – Commercial Interests

The information caught by this exemption relates to your second question which asks for the terms and conditions the Welsh Government has agreed with the company Hamlyn Williams Limited and its related trading entities in order for the company to receive the Welsh Government funding. Decisions relating to non-disclosure of this information have been taken with due consideration of the exemptions identified under Section 43(2) of the Freedom of Information Act 2000 (FOIA). 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).

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.

I recognise the general public interest in openness and transparency and releasing the information would help the public gain a better understanding of the decisions made by Government. It is also recognised there is a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

Some of the captured information, contained in pages 1, 4, 5, 6 and 7 relates to the annual rental for the lease agreement on the project premises, financing and salary expenditure, costs, targets and payment profile. This information is not otherwise available and its disclosure would be likely to cause commercial prejudice to the company because it relates to the people employed and to the sources of finance utilised to purchase assets. To disclose this information would mean disclosing operational and sensitive data upon which Hamlyn Williams Ltd relies in order to undertake its business activities. This information is commercially sensitive to Hamlyn Williams Ltd and disclosure would be likely to cause the company commercial disadvantage. As with most businesses, Hamlyn Williams Ltd works within a highly competitive industry and disclosing the information would mean disclosing financial data and this would provide the company's competitors with a level of information they otherwise wouldn't have.

I believe the public interest is satisfied by the amount of information being disclosed in response to this request for information. The grant offer letter includes the funding pre conditions as set out by the Welsh Government as well as all other details of the grant conditions.

I am aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information.

In conclusion, I believe the balance of the public interest therefore falls in favour of withholding some of the information relating to the Welsh Government's grant contract with Hamlyn Williams Ltd.