



Llywodraeth Cymru
Welsh Government

Our Ref: ATISN 13683

7 February 2020

Dear ,

Request for Information – ATISN 13683

I wrote to you on 16 January regarding your requests for information. You asked for:

1. A copy of the contract, or details thereof, between the Welsh Government and Serco Group Plc to provide air traffic control services at St Athan airfield for the period from January 2018 to the present day, including:
 - i) The commercial arrangements in place
 - ii) The minimum service levels that Serco Group Plc are contractually obliged to provide
 - iii) Any penalties or recourse should Serco Group Plc not meet any SLAs/KPIs.

2. A copy of the contractually obligations, or details thereof, between the Welsh Government and National Air Traffic Services (NATS) to provide air traffic control services at St Athan airfield from 1st April 2020 onwards, including:
 - i) the planned periods of cover i.e. will ATC services be provided at St Athan 7 days a week
 - ii) the commercial arrangements in place
 - iii) the minimum service levels that NATS is contractually obliged to provide
 - iv) any penalties or recourse should NATS not meet any SLAs/KPIs.

I can confirm we hold information captured by your first question. I have concluded however, that the information should be withheld from disclosure under Section 40, personal information and Section 43(2), commercial interests, of the Freedom of



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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.

Information Act 2000. Full reasoning for applying these exemptions is given at Annex A to this letter.

For your second request, I can confirm that there is no contract for the provision of air traffic control services at St Athan between the Welsh Government and NATS (Services) Limited and therefore no recorded information is held for your second question. I can confirm, however, that with regards to point 2(i), it has always been part of the existing and continuing contracts for air traffic control services at St Athan to be available 7 days a week.

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: 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

Request for Information – ATISN 13683

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 references to Serco Group Plc staff members included in the contract document.

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 names of Serco staff members.

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 staff members work for a private company and would not expect their names to be released into the public domain.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the names of the Serco staff members.

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 questions regarding Serco Group Plc's contract with the Welsh Government.

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).

The information contained in the contract between the Welsh Government and Serco Group Plc, to provide air traffic control services at St Athan airfield, includes all of the information you have requested within your first question. This includes: the commercial arrangements in place; the minimum service levels that Serco Group Plc is contractually obliged to provide; and any penalties or recourse should Serco Group Plc not meet any service level agreements/key performance indicators. The contract relates to Serco's commercial activities, which are conducted in a highly competitive international environment.

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.

The Welsh Government recognises the general public interest in openness and transparency and that releasing the above information may help the public gain a better understanding of the service level arrangements agreed with Serco. It is also recognises there is a public interest in how public money is to be, or has been, used to ensure Government gets the best value from the public purse with the contract.

As explained above, the withheld information contains commercially sensitive information. Having consulted with the affected third party, the Welsh Government is of the view that publically disclosing commercially sensitive information regarding the Serco contract with the Welsh Government would likely be detrimental to Serco's business and commercial interests. This is because it is information upon which Serco relies to give it a competitive edge. The information is not commonly known in the market or trade. Disclosure would be likely to cause commercial prejudice to the company as it would mean disclosing operational and sensitive data upon which Serco relies in order to undertake its business activities. Serco Group Plc is in competition with other companies globally, in a highly competitive industry. Disclosing the information would therefore mean disclosing highly technical and specialised information to the company's competitors, a level of information they otherwise would not have access to.

The Welsh Government does not believe it is in the public interest to place commercially sensitive information relating to Serco into the public domain. Rather it believes there is sufficient information already in the public domain regarding the operating arrangements for the airfield. For example, there is published information on the internet via the Aviation Information Publications informing the public of any operational changes to the agreed 9.00 am to 5.00 pm, 7 days a week contracted arrangements. These changes were published in June 2019 when contingency arrangements were put in place, due to the current national shortage of qualified Air Traffic Control Officers. Whilst the contingency arrangements have reduced the operational hours of the airport, they have nonetheless safeguarded 85-90% of traffic levels, meaning the airfield is currently temporarily not available at weekends. Every effort is being made to recruit new Traffic Control Officers so that the original contracted hours can be met.

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 the information relating to the Welsh Government's grant contract with Serco Group Plc.