



Llywodraeth Cymru
Welsh Government

Email request

Our ref: ATISN 13868

Date: 29 April 2020

Dear ,

Request for Information – ATISN 13868

Thank you for your request which I received on 4 March. You asked the following:

A copy of the visuals for the winning bid for the contract for the Welsh Government stand at the National Eisteddfodau in 2020.

I have decided that the information you have request is exempt from disclosure under section(s) 43(2) “Commercial interests” of the Freedom of Information Act (FOIA) and is therefore withheld. The reasons for applying this exemption is set out below.

When considering whether or not the requested information should be released or not, the FOIA requires that we are blind to the identity of the requester. This is because any information released in response to a FOI request is released globally via the Welsh Government’s disclosure log, not just that party submitting the request. Consequentially, we have not taken into consideration any personal motive you have for requesting the information, nor have we taken into consideration what you may do with the requested information. Rather, in line with our obligations under the FOIA, we are required to consider the effects of disclosure to the world and how the information may be used by any party.

Section 43 (2) – Commercial Interests

The information caught by your request relates to the winning bid submitted against the tender to design and build the Welsh Government Eisteddfodau stand for 2020. In line with our obligations under s45 of the FOIA, I have consulted the company that submitted the winning bid. To see what, if any, concerns they may have with releasing the requested information into the public domain. Following their response I have decided that the information you have requested is exempt from disclosure by virtue of s43(2) of the FOIA.

This exemption states that:



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(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).

Following the submission by the winning bidder, I have concluded that the requested information shows the creative process, depth of content, the arrangement and presentation of winning tender bid. The designs also show the reasoning behind certain decisions taken by the company. We also believe that it would be possible for competitors to work backwards through the visuals, to establish the costs for individual items. Disclosure of such information, I believe, would be likely to be prejudicial to this company's future commercial activities, as their competitors would be party to information as to how they go about preparing and costing their bids but they would not be party to similar information about their competitors. This is information they would not otherwise have had access to, but for the requested disclosure. I understand that the market for this type of work is relatively small and highly competitive. The release of any information which would put any organisation at a competitive disadvantage, would be very likely to have a significant prejudicial effect on that organisation.

Section 43 is a qualified (public interest tested) exemption. This means that in order for it to be properly applied I must show that the public interest in withholding the information outweighs the public interest in disclosure.

I recognise that there is a public interest in showing that the Welsh Government obtains value for money from the contracts it lets. There is also a public interest in knowing how the Welsh Government considers and select winning bids.

Against that, there is a public interest in ensuring any organisation is not put at a competitive disadvantage simply because of disclosure as a result of a FoI request. It is in the wider public interest to ensure that any tender process received sufficient bids to allow for a competitive competition, thereby increasing the likelihood that the winning bid provides value for money.

It is also in the wider public interest that all those who are considering submitting bids against any tender feel confident that in doing so, and that their commercially sensitive information will not end up being made available for public consumption and to likely competitors in future tenders.

In conclusion, I do not think that disclosure of the visuals from the winning tender would inform the wider public as to how the Welsh Government selects winning bids nor how it achieves value for money. Disclosure, however, I believe could distort or fetter future tender exercises, as some companies may be more reticent to submit bids through fear of disclosure. The wider public interest, I believe, favours ensuring a competitive market, that in turn provides a greater likelihood of value for money for winning bids. Consequently, I believe the wider public interest in maintaining the exemption outweighs any public interest in disclosure.

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 e-mail: 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