



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: ATISN 14241

12 October 2020

Dear

### **ATISN 14241 – The New Velindre Cancer Centre**

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 17 August. Your request relates to the New Velindre Cancer Centre, specifically the following:

- 1. A copy of the Outline Business Case for the New Velindre Cancer Centre.*

We wrote to you on 8 September indicating that we needed time to consider undertaking a public interest test and asked if you would consider clarifying whether there was any specific information you are looking to access. You confirmed that you were particularly interested in the Economic and Financial cases for both the OBCs (Enabling Works and Main Project). You also explained that the focus of the enquiry was to understand how the projects will be funded, how much might be paid to developers, the overall costs to the public once (for example) repayment of debts and management fees have been taken into consideration.

The Outline Business Cases for the new Velindre Cancer Hospital and its associated enabling works are presently progressing through scrutiny - are subject to change and have not been through a formal approval process. The cases include a range of commercially sensitive information which will be used to make recommendations relating to the financial scope of the project as part of a commercial procurement process via competitive dialogue.

I note your enquiry in respect of payments to developers including debts and management fees. The dialogue procurement process being followed will involve competitive negotiation and scoring of the design and funding solution. As such, absolute certainty around cost and annual service payment will not be determined until presented at Full Business Case stage at a future date.

The financial modelling set out at this early stage has to be held in commercial confidence so not to influence nor prejudice the procurement process. The release of such information will not only harm the procurement process and potentially be subject to challenge if any form of unfair advantage is perceived. I am also mindful that publication could also prejudice the financial interests of the project and Ministers decision making.

Welsh Government does hold some correspondence that falls into scope of your request but is withheld under the following FOIA exemptions:

- Section 29(1)(b) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the financial interests of any administration in the United Kingdom, as defined by section 28(2).
- Section 43(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).

We have concluded that, in this instance, information related to this request is currently undergoing scrutiny and not been formally approved. Disclosure of commercially sensitive information will not only harm the procurement process but also prejudice the financial interests of the project and Ministers decision making and therefore exempt under Section 29(1)(b) and Section 43(2) of the FOIA at this time. For further information, see annex.

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](mailto: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**

### **Engagement of Section 43(2) and Section 29(1)(b)**

Section 43(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 29(1)(b) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the financial interests of any administration in the United Kingdom, as defined by section 28(2).

Officials have carefully considered all of the information captured by this request and consider that the information in question should be exempt under Section 43(2) of the Freedom of Information Act.

Both Section 43(2) and Section 29(1) are public interest exemption. This means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

### **Public interest arguments in favour of release**

Release of this information would promote transparency of the content of the outline business case it's rationale, benefits, costs, risks and timescales. This would contribute to increase public understanding and accountability in this area.

### **Public interest arguments in favour of withholding**

#### **Section 29(1)(b)**

The Outline Business Cases for the new Velindre Cancer Hospital and its associated enabling works are presently progressing through scrutiny, are subject to change and have not been through a formal approval process. The cases include a range of commercially sensitive information which will be used to make recommendations relating to the financial scope of the project as part of a commercial procurement process via competitive dialogue. The information contained within the case should not be made public as the case will determine the detailed offer to the commercial market. Any release of options or scenarios in what is an outline case will harm and likely prejudice the competitive dialogue process and fetter the ability to achieve best value. As a result, the financial interests of the Welsh Government as project sponsor and funder will be prejudiced by such disclosure.

#### **Section 43(2)**

The Outline Business Case and supporting documents being withheld is a draft document progressing through scrutiny. It contains market sensitive information, particularly relating to financial modelling unitary charge scenarios which it is not considered appropriate to share or disclose. The procurement will be a competitive dialogue and any business case approval will set out the funding conditions and be signed off by the Minister for Health & Social Services and the Minister for Finance and Trefnydd. The release of commercially sensitive information will not only harm the procurement process but also prejudice the financial interests of the project and Ministers decision making.

Any document release at this point would place the Welsh Government as funder and sponsor and Velindre procuring authority in a difficult position. If commercially sensitive information was issued at this stage of the business case scrutiny process, given that it is subject to change, release could be misleading. It could impact on the procurement process and potentially be subject to challenge if any form of unfair advantage is perceived. This

may cause potential harm to existing relationships and the successful delivery of the scheme.

### **Conclusion**

Whilst recognising that there are public interest arguments for disclosure of the Outline Business Case, I consider that the public interest in withholding the information outweighs that in releasing it in this instance.