

26 September 2024

Dear

## **ATISN 20801**

Thank you for your request which I received on 25 July 2024 about contract between Welsh Government and BT regarding PSBA. You asked for:

1. Indexation Clause: Does the contract include an indexation clause?
2. Indexation Mechanics: If such a clause exists, what are the specific mechanics of this indexation?
3. Uplifting Charges: Has BT been uplifting their charges under this contract, and if so, how frequently and by what amount?
4. Can the indexation provisions please be provided including all relevant definitions and interpretation clauses?
5. Can the entire contract please be provided?

### **Our response**

The information you requested with regard to bullets 1,2 and 4 is enclosed at Annex A

I have decided that some of the information is exempt from disclosure under section(s) 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex B to this letter.

### **Next steps**

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

**The Agreement does contain an indexation clause, as follows:**

“Save in respect of the Charges (which shall be adjusted in accordance with Schedule 7.1 (Charges and Invoicing)), if an amount or sum is expressed to be “subject to indexation” at a point in time, it shall be adjusted by reference to the percentage change in the Retail Prices Index excluding mortgage interest payments (RPIX) over the most recent twelve (12) months for which published data is available at that point in time.”

**Schedule 7.1, referenced above, provides as follows:**

16.1 Indexation shall not apply to any Service Charges except the Day Rates.

16.2 Any amounts or sums in this schedule which are expressed to be "subject to indexation" shall be adjusted to reflect the effects of inflation at the end of each Agreement Year in accordance with the provisions of this paragraph. The adjustment shall be measured by changes in the relevant index published for that Agreement Year as calculated in accordance with the following formula within 30 days of each Balance Sheet Date:  
Amount or Sum x (( Index d/Index o) - Y%)

Where

"Index" means the Consumer Prices Index (all items excluding mortgages) or such other index as may most closely replace that index from time to time;

"Index d" is the value of that Index published or determined with respect for the period immediately preceding the Effective Date;

"Index o" is the value of that Index published or determined with respect to the period immediately preceding the end of each Agreement Year in respect of which the amount or sum falls to be adjusted; and

"Y" is an efficiency factor of **REDACTED** percent (**REDACTED**).

20.1 Additional Services Ordered shall be charged at the rates set out in Annex C to this schedule ("Day Rates") which may at the Supplier's option be subject to indexation once in every Agreement Year.

## Application of exemptions

The Freedom of information Act provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

- a) The efficiency factor that is part of the indexation calculation in section 16.2 of Schedule 7.1 of the agreement between Welsh Government and BT and further details of these provisions and their application.
- b) In relation to bullet 3 in the letter above regarding uplifting charges.
- c) In relation to bullet 5 above the entire agreement and schedules apart from the information on indexation which is being released to you.

This Annex sets out the reasons for the engagement of section(s) 43 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### Engagement of section 43 (Commercial Interests) of the Freedom of Information Act

The Welsh Government believes that information that is of commercial interests to BT or the Welsh Government should be exempt from disclosure.

In relation to bullet a) above releasing the efficiency factor would provide potential bidders for the PSBA contract when it is re-procured in 2026 with information that disadvantage the Welsh Government's negotiations. Further details of these provisions are integral to the supplier's financial model and pricing, and, therefore, cannot be disclosed. Any such disclosure would be commercially prejudicial to BT's interests.

In relation to bullet b) above the charge uplifts are integral to BT's financial model and pricing, and there is a risk that this information could be used to reveal sensitive pricing information to BT's competitors. Any such disclosure would be commercially prejudicial to BT's interests.

In relation to bullet c) above the PSBA contract with BT has significant commercial value due to the aggregation of public sector demand for common connectivity services, which creates a single high-value commercial target for companies seeking to win that business. This aggregation brings significant benefit to the public sector through introducing consistent service delivery across a diverse and distributed public sector, and aggregated buying power for commonly consumed services. The current agreement runs to 2026, with a possible further extension to 2028. These timescales mean that the Welsh Government will soon be considering options to ensure business continuity and maintain service delivery. This will include taking a version of the PSBA services contract into a market engagement and procurement cycle in due course. A managed market engagement process will allow release to be controlled while protecting the commercial interests of the current supplier. Premature release of the current contract could compromise the Welsh Government's ability to negotiate a new contract and may impact the commercial interest of the current supplier.

## **Public Interest Test**

In order to satisfy the public interest test in relation to the exemptions, it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

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

There is a public interest in releasing the information requested as it allows wider scrutiny of the PSBA contract and provides transparency about how public funding is being used to provide connectivity to public sector bodies.

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

There is a public interest in withholding the information outlined above. If the information was disclosed this would undermine competition in the markets in which these services are offered. It is in the public interest to ensure that competition in the market is not distorted by competitors having access to commercially sensitive information about each other. Placing one company at a disadvantage to another by commercially prejudicing its position in the market place is contrary to the public policy goal of maintaining and encouraging competition in the market and thus achieving best value for public bodies and the citizens and consumers they represent.

In addition, Welsh Government is commencing work on re-procuring the contract releasing the information would put the Welsh Government at a disadvantage in negotiating the new contract leading to a less advantageous outcome and increased costs to the public purse.

### **Balance of public interest test**

On balance the public interest of withholding the information outweighs the public interest in favour of disclosure.