

22 October 2024

Dear

ATISN 21970 – Transformation Capital Grant Application for Aberaeron Library

Information requested

Thank you for your request which I received on 26 September 2024. You asked for:

- all correspondence from Ceredigion County Council to Welsh Government relating to their application to the Transformation Capital Grants scheme being made; and
- all correspondence from Welsh Government to Ceredigion County Council relating to that application and the offer of grant funding made.

Our response

A copy of the information I have decided to release is enclosed.

I have decided that some of the information in the enclosed list is exempt from disclosure under section(s) 40 and 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A 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

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 - Application of exemptions/exceptions

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:

Personal data relating to the officials involved in exchanges relating to this grant application and commercial/cost information under Sections 40 and 43 of the Freedom of Information Act respectively.

This Annex sets out the reasons for the engagement of section(s) 40 (2) and 43 (2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Engagement of Section 40 (2) (Personal data) of the Freedom of Information Act

Section 40(2) of the Freedom of Information Act covers personal data.

Section 40(2) 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 personal data including that of third parties.

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:-

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

The personal data in the context of the request relates to the names and other details of those individuals identified in the correspondence, where such personal details are not already in the public domain. There is a legitimate interest in understanding the context of communications in terms of which organisation was communicating i.e. from which and to which organisations correspondence was addressed.

2. Is disclosure necessary?

Disclosure of the personal data is not necessary for the legitimate interest, where we can provide the context of the request instead and the conversation and flow of communication exchanges can be understood. Personal data in this context does not add anything further to understanding the email communication exchanges.

By replacing the personal data/names with generic identifiers (e.g. WG Official 1 etc.), we are able to maintain the context for which a legitimate interest exists without disclosing personal data, which affects the fundamental rights of the data subjects under data protection legislation.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

As the redaction meets the legitimate interest and therefore, disclosure of the personal data is not necessary, Welsh Government considers that there is no need to further consider the balance of interests, and the information is withheld.

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.

Engagement of Section 43 (2) (Commercial Interests) of the Freedom of Information Act

Section 43(2) of the Freedom of Information Act states:

“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 Welsh Government believes that commercial information relating to quotations and costs provided relating to potential future contracts should be exempt from disclosure. Disclosure of such costs and detailed quotations has the potential to undermine future competitive tendering for contracts and result in value for money not being achieved as well as the commercial costing strategy taken by companies that have provided the quotations for the delivery of the work likely to be required to deliver elements of any project.

Public Interest Test

The following section sets out the arguments for and against the release of the information being withheld under Section 43 (2) of the Freedom of information Act and balancing these arguments in making a decision as to whether this information should be withheld or released.

Public interest arguments in favour of disclosure

There is a public interest in individuals being able to exercise their rights under the Freedom of information Act to enhance public scrutiny of decision making including the reasons for decisions or actions taken by a public body and in some cases challenge decisions affecting the lives of members of the public.

There is an inherent public interest in ensuring that public authorities are transparent in the decisions they make in order to promote accountability and improve the quality of their decision making.

From the perspective of the request being made, there is a public interest argument in favour of disclosure that there currently is a serviceable library in Aberaeron Town Centre and a question as to why public money being spent creating a new library at a time when public funds are limited.

A further public interest is that releasing the information could contribute to a debate on the matter being considered.

Public interest arguments in favour of withholding

There is a strong public interest argument in favour of withholding the information in order to ensure the integrity of future procurement exercise and securing value for money for public money.

It would undermine the ability to procure services during future tendering processes if the information, where it relates either to estimated costs for work being planned and/or specific quotations provided by companies, was released in response to this request and the public generally. Furthermore, the release of such information would identify detailed costs and costing structures for companies providing quotations and leave them at a competitive disadvantage.

Not releasing this information at this time maintains the integrity of future procurement and leasing exercises for all parties. Based on this, there is a strong public interest in withholding the information to ensure the integrity of future procurements and achieving value for money for public money.

Balance of public interest test

In balancing the clear public interest arguments set out above for and against releasing the information in question, Welsh Government considers that the strong arguments in favour of withholding the information under Section 43 of the Freedom of Information Act, in view of the likely impact of release, outweigh the factors in favour of disclosure. Welsh Government also considers that disclosure of the exempted information would not further the understanding as to why this project is going ahead.