

Dear

18 July 2022

Request for Information – ATISN 16419

Thank you for your request for information dated 24 May.

Information requested

You asked for the following information in relation to the purchase of Gilestone Farm –

1. Was the Minister for Economy aware of an agreement between Charles Western and Mr G Thomas regarding mineral rights after the sale.
2. Was the Minister aware of the flooding risk in all but 2 fields.(provide docs)
3. A copy of the 'submission paper' sent to the Minister for Economy relating to the purchase of Gilestone Farm.
4. A copy of any correspondence between Charles Western and WG.
5. Why did the Minister buy a farm.

Our response

The Freedom of Information Act provides a right to ask for recorded information held at the time a request is made and does not require an authority such as the Welsh Government to provide views or opinions where those views are not already recorded. This is confirmed by the Information Commissioner's guidance 'The Guide to Freedom of Information', page 7:

"The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it."

On this basis, I can confirm that no recorded information is held for questions 1 and 4. We consider question 3 to be exempt from disclosure under Section 43(commercial interests) of the Freedom of Information Act 2000. Full reasoning for applying the exemptions is given at Annex A to this letter.

The purchase of Gilestone Farm was approved by the Minister for Economy for economic development purposes. Welsh Government officials are aware that the property is in a flood risk area.

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

ATISN 16419 – Consideration For and Against Disclosure of Information

Decisions relating to non-disclosure have been taken with due consideration of the exemption identified under Section 43(2), commercial interests, of the Freedom of Information Act 2000 (FOIA).

Section 43 is a qualified (public interest tested) exemption and 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. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Section 43(2) – commercial interests

The exemption states:

(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 Welsh Government(WG) is of the view that revealing the documentation and correspondence in relation to the purchase would be likely to prejudice our commercial interests should it be disclosed at this point in time. To reveal the information would include the financial information and business case which is directly linked to any valuations and or offers for the land. To reveal this information would likely to prejudice our commercial interests should the information associated with this matter be disclosed. The information would reveal commercially sensitive information not otherwise publicly available and which, if disclosed would be likely to prejudice our service offering and future strategy and development .

Disclosing the information would give us a disadvantage in future dealings for any potential future purchases. It would place WG at a distinct commercial advantage when negotiating and therefore prejudice our ability to engage in future commercial activities. It would also allow any other potential purchasers an insight into our methodology and proprietary information they would otherwise not have considered in their offering. We do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest.

Public Interest Test For Disclosure

The Welsh Government recognises the public interest in openness and transparency within government, particularly in terms of ensuring an accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely.

Public Interest Against Disclosure

Disclosure of this information would provide competitors and potential sellers access to a level of information not otherwise available to them. This would be likely to enable them to obtain an advantage when negotiating with Welsh Government. We do not believe facilitating this type of unfair competitive advantage would be in the wider public interest.

For example, disclosure of information would allow land owners to understand previous purchases and potentially negotiate a detrimental position for the Welsh Government. To freely disclose the information would give competitors a distinct commercial advantage and stepping stone which would be likely to prejudice our ability to engage in fair and level playing field for our commercial activities. WG do not have access to similar information on its competitors as they do not publish it, so would be at a significant disadvantage. We believe the resultant harm should this information be released, would be substantial.

Whilst the withheld information would be of interest to other competitors, we do not believe it would be of sufficient interest to the wider public. Release of the information would also allow potential competitors access to a level of detail that they otherwise wouldn't have, so as to enable them to obtain a commercial advantage by understanding and potentially copying the methodology, our processes and business case. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest. I further do not believe there is a public interest in prejudicing the commercial interests of the Welsh Government or the company by the release of this information.

I am aware that, as a general rule, the sensitivity of information is likely to reduce over time; therefore the age of the information, or timing of the request, may be relevant in determining whether to apply an exemption, or where the public interest may lie. In this case, however, the information captured is very much current information. I believe therefore that the balance of the public interest falls in favour of withholding the information.