

17 August 2022

Dear

## **ATISN 16547 – Eurovision Song Contest**

### **Information requested**

Thank you for your request which I received on 3 August 2022. You asked for:

- All written communication between the Welsh Government and Cardiff Council regarding hosting Eurovision in 2023 between, and including, 14 May and 3 August 2022.

### **Our response**

I have decided that the information you have requested is exempt from disclosure under section(s) 41 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 1 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

## **Annex 1**

### **Application of exemptions/exceptions**

The Freedom of information Act/Environmental Information Regulations provide 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 information you have requested:

This Annex sets out the reasons for the engagement of section(s) 41 and 43 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### **Engagement of section 41 (Information provided in confidence) of the Freedom of Information Act**

The Welsh Government believes that the communications requested should be exempt from disclosure. This is because the communications are subject to a non disclosure agreement with the BBC.

Section 41 of the FOIA sets out an exemption from the right to know where the information was provided to the public authority in confidence.

Information will be covered by Section 41 if;

- it was obtained by the authority from any other person,
- its disclosure would constitute a breach of confidence.
- a legal person could bring a court action for that breach of confidence, and
- that court action would be likely to succeed

When determining if disclosure would constitute a breach of confidence, the authority will usually need to consider;

- whether the information has the quality of confidence,
- whether it was imparted in circumstances importing an obligation of confidence, and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

As the information requested is subject to a legally binding non disclosure agreement with the BBC, our view is that the information has the necessary quality of confidence. We have consulted with the BBC and they have not authorised disclosure of the information. As disclosure would be actionable, and as it would be harmful to the BBC's bidding process, the information is exempt under section 41, subject to our consideration of the public interest below.

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

The Welsh Government believes that the communications should also be exempt from disclosure under this exemption because the communications contain

information about the bidding process that is commercially sensitive for the BBC. Disclosure of the requested information would be likely to adversely affect the BBC's ability to conduct the bidding process, and would lead to commercial loss for the corporation should bids fall through or venues were to become unavailable as a result of release of the information that the BBC are seeing to protect with their non disclosure agreement.

## **Public Interest Test**

In order to satisfy the public interest test in relation to the exemption(s), 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**

Openness and transparency in government are a matter of significant public interest, and the subject matter at hand is one of wide public recognition. However, in an attempt to be open about the process, Welsh Government and Cardiff Council have already released this public statement:

[Joint statement – Eurovision Song Contest 2023 \(cardiffnewsroom.co.uk\)](https://www.cardiffnewsroom.co.uk/joint-statement-eurovision-song-contest-2023)

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

As information captured by this request captures information specific to the nodding process that are covered by a non disclosure agreement, and as that non disclosure agreement is necessary to the ongoing bidding process, it is not in the public interest that such information be released. Doing so would be expected to damage and potentially cause the collapse of negotiations with other venues, and could jeopardise the whole process. This would clearly not be in the public interest, especially considering the high level of recognition for this event.

Further it is not in the public interest that the commercial interests of a public broadcaster, nor of potential venues be jeopardised by release of information that would damage the bidding process.

## **Balance of public interest test**

Although I understand the high level of public interest in understanding potential hosting arrangements for this event, which has high public recognition, I believe that the joint statement linked above provides sufficient information for the public to understand why Cardiff are no longer pursuing their bid to host the event.

The public interest in withholding the communications themselves, both for protection of the bidding process, and for protection of the commercial interests of the BBC and of bidding venues, is clearly very high and an equally strong countervailing public interest in disclosure does not exist at this time. I therefore find that the public interest favours withholding this information.