

9 May 2023

Dear

Request for Information – ATISN 17373

Thank you for your request which I received on 05 April. You asked for:

1. to see all legal opinions on the subject of the SACs at Gilestone
2. to see all legal opinions on the sporting & fishing rights at Gilestone
3. how much has been spent on these legal opinions, as separate amounts
4. how many hours any in-house lawyers have spent on these issues
5. all correspondence with the holder of the sporting & fishing rights over Gilestone

Our response

1. to see all legal opinions on the subject of the SACs at Gilestone

We do not hold any information – we have not engaged formal legal opinions on the SACs.

2. to see all legal opinions on the sporting & fishing rights at Gilestone

We do not hold any information – we have not engaged formal legal opinions on the sporting and fishing rights at Gilestone Farm.

3. to know how much has been spent on these legal opinions, as separate amounts

No formal legal opinions have been engaged so no money has been spent.

4. how many hours any in-house lawyers have spent on these issues

We do not hold any information – staff hours in Welsh Government are not tracked against specific tasks.

5. all correspondence with the holder of the sporting & fishing rights over Gilestone

The information you have requested is at Annex B of this letter.

I have decided that some of the information, information that relates to ongoing commercial discussions, is exempt from disclosure under section 43 of the Freedom of Information Act and is therefore withheld. I have also redacted personal information under section 40(2) of the Freedom of Information Act. 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

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 information in relation to the third party owned shooting and fishing rights shared with WG by the owner, or other information relating to the purchase would be likely to prejudice ongoing commercial discussions should it be disclosed at this point in time. To reveal the information would include the legal information which is directly linked to any valuations and or offers for the land. Disclosure of this information would be likely to prejudice their commercial interests. It would also allow any other potential purchasers an insight into the company's methodology and proprietary information they would otherwise not have considered in their offering. The information would reveal commercially sensitive information not otherwise publicly available and which, if disclosed would be likely to prejudice both our and their service offering and future strategy and development.

Disclosing the information would also give WG 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. 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.

To freely disclose the information would give their competitors a distinct commercial advantage and stepping stone which would be likely to prejudice their ability to engage in fair and level playing field for commercial activities. They 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 to countervail the public interest in withholding the information. 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, their processes and business case. I do not believe that 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. 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.

Section 40(2) – 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 2018 ('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 third party personal data.

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:-

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

We recognise that the general principle of accountability and transparency of government is sufficient legitimate interest to see the personal data of those engaged with matters involving the actions of government.

2. Is disclosure necessary?

Disclosure is necessary only in understanding who the actors are in this case. The information requirement as presented is to understand what advice Welsh Government has received and what has been given, but no case has been made to understand the identities of specific officials involved.

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

In carrying out the balancing test, I am aware that no request has been made that makes a specific legitimate interest to know the names of officials and members of the public identified in this correspondence. The context of the discussion can be preserved without naming specific member so the public. Therefore the legitimate interest identified in knowing the names of the correspondents is a general one of transparency. Again, I find that in releasing the context of the information, we have met our duty of transparency. As the fundamental rights of all data subjects are strong ones, an equally strong countervailing legitimate interest should exist for us to release this information. In this case I do not find any such countervailing interest, so on balance the information is withheld.