



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: ATISN 14468

18 November 2020

Dear

ATISN 14468 – The New Velindre Cancer Centre

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 21 October. Your request relates to the New Velindre Cancer Centre and we have interpreted your request as the following:

All correspondence from 01 October to 21 October, between Velindre University NHS Trust (and their representatives or advisers) and Welsh Government (and their representatives or advisers), relating to the Outline Business Case for the New Velindre Cancer Centre.

Our response

Welsh Government does hold correspondence that falls into scope of your request, however, some correspondence which discusses the Outline Business Cases relates to part of the scrutiny process and has not been formally approved. Disclosure of commercially sensitive information will not only harm the procurement process but also prejudice the financial interests of the project and Ministers decision making and therefore exempt under Section 29(1)(b) and Section 43(2) of the FOIA at this time. For further information, see **Annex 1**.

- Section 29(1)(b) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the financial interests of any administration in the United Kingdom, as defined by section 28(2).
- Section 43(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).

Information that we have been able to release is attached in Doc 1 and Doc 1.a However, I have decided that some of the information is exempt from disclosure under section **40(2)** ('personal information') of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at **Annex 2** 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,

Engagement of Section 43(2) and Section 29(1)(b)

Section 43(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).

Section 29(1)(b) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the financial interests of any administration in the United Kingdom, as defined by section 28(2).

Officials have carefully considered all of the information captured by this request and consider that the information in question should be exempt under Section 43(2) and Section 29(1) of the Freedom of Information Act.

Both Section 43(2) and Section 29(1) are public interest exemption. This means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

Public interest arguments in favour of release

Release of this information would promote transparency of the content of the outline business case its rationale, benefits, costs, risks and timescales. This would contribute to increase public understanding and accountability in this area.

Public interest arguments in favour of withholding Section 29(1)(b)

Correspondence and supporting documents include key activities and proposed decision points included in the procurement process related to the new Velindre Cancer Hospital Outline Business Case. This is progressing through scrutiny and not been formally approved. The correspondence contains commercially sensitive information about future decision making which it is not considered appropriate to share or disclose. The procurement will be a competitive dialogue and any business case approval will set out the funding conditions and be signed off by the Minister for Health & Social Services and the Minister for Finance and Trefnydd. The release of commercially sensitive information will not only harm the procurement process but also prejudice the financial interests of the project and Ministers decision making.

Section 43(2)

Correspondence and supporting documents include key activities and proposed decision points included in the procurement process related to the new Velindre Cancer Hospital Outline Business Case. This is presently progressing through scrutiny and subject to change. It has not been through a formal approval process. Information contained within the correspondence includes reference to potential third party interest in any future procurement process. The information contained therefore, should not be made public as the emails contain details about procurement interest which could prejudice competitive dialogue process. As a result, the commercial and financial interests of the Welsh Government as project sponsor and funder will be prejudiced by such disclosure.

Conclusion

Releasing some correspondence at this point would place the Welsh Government as funder and sponsor and Velindre procuring authority in a difficult position. If any commercially sensitive information was released at this stage of the business case scrutiny process,

given that it is subject to change, release could be misleading. It could impact on the procurement process and potentially be subject to challenge if any form of unfair advantage is perceived. This may cause potential harm to existing relationships and the successful delivery of the scheme.

Whilst recognising that there are public interest arguments for disclosure all correspondence with relates to the Outline Business Case, I consider that the public interest in withholding the information outweighs that in releasing it in this instance.

Freedom of Information Act 2000: Section 40(2)

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 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

Your request indicates you are interested in obtaining copies of correspondence between Velindre University NHS Trust and Welsh Government which relates to the Outline Business Case for the New Velindre Cancer Centre. We have concluded that, in this instance, there is little to be gained from releasing the names of individuals named within these emails. We believe we have provided sufficient information to satisfy the legitimate interest and we do not believe disclosure of the identities of those involved would allow any greater understanding.

2. Is disclosure necessary?

Following the above analysis, we do not believe that disclosure of the personal data is necessary.

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

As we do not believe disclosure of this personal data is necessary, there is no requirement on us to undertake a test to balance the legitimate interests against the right of individuals, as the fundamental rights and freedoms provided by the DPA are not being challenged.