

17 February 2022

Dear

Complaint in respect of Request for Information – reference ATISN 15686

Thank you for your letter of 21 January, in which you asked us to conduct an internal review.

In your original request, you asked for:

1. A copy of a letter dated 30 July 2021 from the Chief Executive of Development Bank Wales, Giles Thorley to a Welsh Government official which includes the wording “I cannot see that there is any new information provided which materially changes matters or is clear evidence of serious wrongdoing”.
2. A copy of the request made by the Welsh Government to Giles Thorley asking for more information, to which he responded as above on 30 July 2021.

Officials decided that the information was exempt from disclosure under sections 40(1) and 40(2), personal data, section 43, commercial and section 41, confidential information, of the Freedom of Information Act (FoIA), and the information was withheld.

In summary of the points raised, you say that:

1. You disagree with our use of S.41 – Information provided in confidence (bullet points 1-10 of your letter)
2. You disagree with our use of S.43 – Commercial Interests (bullet points 11-13)
3. You disagree with our assessment of the public interest (bullet points 14-20)

Section 43 – Commercial Interests

I have examined the arguments made under Section 43 and the public interest test. All information that is exempt under Section 41 below is also exempt under Section 43. I shall consider Section 43 first.

This exemption states that:

(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 information that is captured by this request is financial information that has been supplied to Welsh Government by Development Bank Wales (DBW). Disclosure of such information under the FOIA is disclosure not just to yourself, the requestor, but disclosure to the world. Officials must therefore determine if disclosure of such financial information into the public domain would or would be likely to prejudice the commercial interests of DBW.

I have examined the information and the evidence supplied to us by DBW and am of the view that officials were correct in their assessment that the financial information caught by your request is information that is not in the public domain. Further I am of the view that they correctly assessed that disclosure of this information would be likely to compromise the ability of DBW to negotiate future equity investment on a commercial basis and also disclose information not otherwise publically available regarding a private business which is still in operation.

I therefore uphold the engagement of section 43 and now turn to the public interest arguments.

I believe that officials have correctly assessed the legitimate interest that exists in the release of the requested information, but have also identified a significant harm.

To disclose this information would mean disclosing operational data upon which DBW relies in order to undertake its business activities in a competitive market. This information is commercially sensitive to DBW and disclosure would be likely to cause the company commercial disadvantage when negotiating future equity investment on a commercial basis. Similarly, releasing the information would place in the public domain commercially sensitive information about a private business which remains in operation. This is information that is not currently in the public domain. Releasing the information would leave competitors of the business with an unfair advantage, and this will disadvantage DBW. It is not in

the public interest that DBW should be placed at commercial disadvantage simply because of its sharing of such information with Welsh Government.

My view is that officials have correctly appraised the public interest test, and that the balance of public interest lies in protecting the commercial operations of DBW.

Section 41- Information provided in confidence

I turn now to consideration of section 41. Section 41 sets out an exemption from the right to know where the information requested was provided to the public authority in confidence and disclosure of the information would give rise to an actionable breach of confidence. Section 41 states:

- (1) Information is exempt information if—*
- (a) it was obtained by the public authority from any other person (including another public authority), and*
 - (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

I have reviewed the evidence supplied to us by DBW and have concluded that the information identified in our response to you as being covered by this exemption was provided to Welsh Government with a duty of confidence.

Our reasoning on this was provided in full in our response to you.

As disclosure of this information would create an actionable breach of confidence, I uphold the decision to exempt this information under Section 41.

Section 41 is an absolute exemption and is not, therefore, subject to the public interest test.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Aine Gawthorpe,
Deputy Director of Foundational Economy