

ATISN 16751– Kilvey Hill Development

Application of exemptions/exceptions

The Freedom of Information Act 2000 provides 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.

The information requested includes the support provided or offered, agreements entered into, by the Welsh Government, or other public body provided to 'Skyline Enterprises'. As we have indicated earlier, at this time we have not provided or offered any funding, and no agreement exists there is no such information held.

I have decided to withhold the following information:

Information being withheld	Exemption
Copies of discussions with Skyline	Section 21(1) 'Information reasonably accessible to the requester without recourse to a Fol request'
	Section 29(1)(a) 'Economic Interests'
	Section 43(2) 'Commercial interests'

This Annex sets out the reasons for the engagement of sections 29(1) (a) and 43(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Engagement of section 21(1)

This exemption states:

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

Some of the information in the communications with Skyline included that which is already in the public domain, at:

[What's happening with the zipline and luge run plan for Swansea? - Wales Online;](#)

[Zipline and luge run development in Swansea aims for 2025 opening - Swansea;](#)

[Swansea adventure park plans take a step forward \(wales247.co.uk\);](#)

[Skyline Enterprises visits Swansea to look at Kilvey Hill progress | Wales Property News \(insidermedia.com\)](#)

As this information is freely available to everybody without the need to submit a FoI request, this is exempt from disclosure under s21(1).

This exemption is not subject to the public interest test.

Engagement of section 29(1) (a) ‘Economic Interests’

This exemption states that

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the economic interests of the United Kingdom or of any part of the United Kingdom.

One of the key objectives of the Welsh Government is to grow the Welsh economy. The Welsh Government engages with potential investors, to try to ensure that Wales is considered as part of those organisations’ decision-making processes and that these organisations decide to invest in Wales.

The information captured by this request relates to the early discussions with a company looking to develop a project that has the potential to invigorate the local economy in the respective area as well as drawing in visitors from wider afield, benefiting other local businesses and the wider local economy.

Attracting new businesses is a highly competitive market with national and regional governments around the world actively working to attract investment to the benefit of their respective economies.

Guidance from the Information Commissioner’s Office states that [*economic development often involves public authorities in establishing strong relationships with the private sector. There may be fears that access to information about those relationships or to information that has been provided by private sector organisations may damage relations or inhibit future private sector involvement.*](#) (para 33 refers).

We believe that disclosure of the details of these discussions at this point in time would be likely to prejudice these discussions with the real prospect that the project does not go ahead with the subsequent loss to the local and wider Welsh economy.

For this reason we believe that the exemption at s29(1) (a) is engaged.

Public Interest Test

In order to satisfy the public interest test in relation to exemption 29(1), 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

The Welsh Government acknowledges the public interest in openness and transparency that release of the information would engender. There is also a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

There is a strong public interest in showing that the Welsh Government is actively working to bring new businesses to invest in Wales, to build and strengthen the Welsh economy. It is also recognised that disclosing the information might increase understanding of how public money is used to support businesses in Wales.

Public interest arguments in favour of withholding

We believe it is not in the public interest to release details of the discussions with a potential investor (i.e. Skyline) at this point in time, when discussions are ongoing and still at an early stage. There is a real risk that disclosure of these discussions would be likely to result in Skyline withdrawing from discussions and actively pursue other localities. We do not consider that the company's plan should be prejudiced, or that the discussions with the company be jeopardised.

Release of this information is also likely to inhibit future private sector involvement in seeking assistance from the Welsh Government, due to fear that their discussions with ourselves would be released before they are finalised.

Balance of public interest test

Whilst it is recognised that, as a general rule, the sensitivity of information is likely to reduce over time, in this case the information captured is very much current. We accept that over time it may become less sensitive.

There is a clear case to consider that this is a project of public interest. It is part of the reason why there is a facility through Welsh Government to consider support to capital projects that have the potential to change perceptions, and attract additional and high spending visitors with the potential to benefit the economy directly and indirectly.

However, it is our view that releasing the information would likely prejudice our ability to work with potential investors to enhance the local and wider Welsh economy, and thereby prejudice the economic interests of Wales as defined by this exemption and that the public interest is therefore best served by withholding the information requested.

Having weighed up the arguments in favour and against the release of this information we have decided that, on balance, it is in the public interest to not release this information due to the factors outlined above.

Engagement of section 43(2)

This 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 correspondence with Skyline contains information which both ourselves and Skyline believe is commercially sensitive information. This includes financial information and detailed information on the company's future plans. We are of the view that the disclosure of such information would be likely to prejudice the company's commercial interests should the information associated with the ongoing discussions be disclosed at this point in time. The information would reveal commercially sensitive information not otherwise publicly available and which, if disclosed would be likely to prejudice the company's service offering and future strategy.

The information for example, contains financial data as part of the process for funding which are not in the public domain. Placing this information into the public domain would mean that potential competitors would have access to a level of information not otherwise available to them. This has the potential to undermine the companies trading position, thus putting them at a significant disadvantage.

Releasing the information would also provide the company's competitors with an indication of the company's funding position which in turn would be likely to prejudice their ability to further capitalise its business. It would also have a direct impact upon the company's current and future potential revenues as well as its ability to conduct business in the free market by adversely influencing existing and potential clients.

It is rare to consider a case such as this that has the potential to grow the economy of Wales and help build a vibrant and innovative destination. It is even rarer to see such a project being led by an inward investor. We need to be confident that such discussions and considerations can be conducted in confidence until such time that this can be disclosed without harm occurring.

Public Interest Test

In order to satisfy the public interest test in relation to exemption 29(1), 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 Test for Disclosure

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

There is also a public interest given the strategic nature of this project and its potential impacts within the wider economy of Wales.

Public Interest Against Disclosure

We do not believe there is a public interest however in prejudicing the commercial interests of the company by the release of this information. There exists a further public interest in ensuring that private companies such as this, that aim to create a significant amount of new jobs for the people of Wales, can do so in the knowledge that their efforts will not be prejudiced by the untimely disclosure of commercially sensitive information.

Whilst we accept that, as a public body, the public will always have an interest in the work of the Welsh Government, and that the release of this information would engender our willingness to be open and transparent in the way that we work, we believe the priority in this instance is ensuring the commercial interests of the company are safeguarded. It is in the wider public interest that such proposal come into fruition, with the jobs that follow.

We are of the view that the more innovative all year-round visitor attractions we have in Wales the better for the wider Welsh economy. The more world class attractions we have, the bigger the draw for visitors, and this increase would be shared across the wider local economy and supply chain businesses. Not to consider such opportunities would be likely to lead to relatively fewer visitors, with the consequential reduced direct and indirect economic impacts.

Balance of public interest test

We are 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.

Having weighed up the arguments in favour and against the release of this information we have decided that, on balance, it is not in the wider public interest to prejudice our ability to fully consider plans and proposals from third parties that are looking to invest in Wales.