

ANNEX A

ATISN 16938 – 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 at this time would be likely to prejudice Wavehill's commercial interests should it be disclosed at this point in time.

Disclosing Wavehill's methods and putting this in the public domain could potentially provide a resource for a competitor organisation. Wavehill's day rates are commercially sensitive and sharing this could assist competitor organisations in pricing their submissions for any future work that Wavehill may also tender for.

Public Interest in favour of disclosure.

This contract represents a key part of the Welsh Government's aim to deliver an Anti-Racist Wales through informed policy development, based on analysis of community engagement. 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. Full disclosure of the bid information may allow the wider public to understand how community engagement analysis is carried out for Welsh Government purposes and demonstrate value for money in pursuing social justice in Wales.

Public Interest in favour of maintaining the exemption

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 competitors aiming to attract similar tenders a distinct commercial advantage and which would be likely to prejudice our ability to engage in fair procurement of analytical work in

future. This could damage confidence in Welsh Government procurement process, discouraging suppliers from bidding for Welsh Government tenders in future, compromising a key stage of developing policy, making the Welsh Government less effective in making informed decisions in delivering public services. 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, given that the final report has been published. I further do not believe there is a public interest in prejudicing the commercial interests of Wavehill 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.