

5 July 2023

Dear

Request for Information – ATISN 18574

Information requested

Thank you for your request which I received on 30 March. You asked for:

- Copies of all minutes for meetings between Welsh Government and Marubeni from the beginning of 2022 to the present.

Our response

A copy of the information I have decided to release is enclosed.

I have decided that some of the information is exempt from disclosure under sections 40(2) and 43 of the Freedom of Information Act and is therefore withheld. 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

Application of exemptions/exceptions

The Freedom of information Act/Environmental Information Regulations provide 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.

I have decided to withhold the following information:

- Some sections of the minutes relating to commercial matters – Section 43 – Commercial interests
- Personal information included in the minutes – Section 40(2) – Personal information

This Annex sets out the reasons for the engagement of sections 43 and 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

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 some of the information in relation to sensitive commercial matters would be likely to prejudice Marubeni's (as well as WG's) commercial interests should it be disclosed at this point in time. To reveal the information would place financial and related commercial information into the public domain that is not otherwise available, and would put Marubeni at a commercial disadvantage, and could damage their ability to compete in an open marketplace where other companies, including their competitors, have not been required to disclose such information. It would also allow any other potential purchasers an insight into the company's methodology and proprietary information.

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. Likewise dealings with commercial companies should be conducted in an open and transparent matter, so there is a strong public interest in understanding the context of negotiations.

Public Interest Against Disclosure

Disclosure of this information would provide competitors access to a level of information not otherwise available to them. This would be likely to enable them to obtain a competitive advantage and could also damage the value of the existing project. We do not believe facilitating this type of unfair competitive advantage would

be in the wider public interest. 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 and would not be in the wider public interest. 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 believe the public interest in openness and transparency is met in our release of the balance of the information in these minutes.

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

The personal data is the names of living individuals contained within the information captured by this request. There is a legitimate interest in understanding the context of the minutes, and from which organisation the captured information arose.

2. Is disclosure necessary?

Disclosure of the personal data is not necessary for the legitimate interest, where we can provide the context of the request instead. By replacing the names with the context (e.g. WG Official etc.) we are able to maintain the context for which a legitimate interest exists without disclosing personal data, which affects the fundamental rights of the data subjects under data protection legislation.

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

Because the redaction meets the legitimate interest, and does not subvert it, disclosure of the personal data is not necessary, there is no need to further consider the balance of interests, and the information is withheld.