



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref ATISN 12238

Mr Mostyn Jones  
Caseworker/Researcher  
for Janet Finch Saunders AM

Mostyn.Jones@assembly.wales

15 May 2018

Dear Mr Jones

### Request for Information – ATISN 12238

I wrote to you on 20 April regarding your request for information. You asked for the following information regarding the Year of the Sea 2018 film, on the page entitled 'Year of the Sea Advert 2018 Unveiled' on the web page <http://www.visitwales.com/sea/year-of-the-sea-2018-film-unveiled>, specifically the video with the seaplane:

1. How much money was spent on making the video?
2. A breakdown of all the relevant costs.

I confirm we hold information caught by your request. I have concluded, however, that the information is exempt from disclosure under Section 29, the economy, Section 41, information provided in confidence and Section 43, commercial interests, of the Freedom of Information Act 2000. My reasoning for withholding the information under these exemptions is given at Annex 1.

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 [FreedomOfInformationOfficer@gov.wales](mailto:FreedomOfInformationOfficer@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.



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E&T FOI Team  
Welsh Government  
Treforest - QED Centre  
Main Avenue  
Treforest Industrial Estate  
Ponty pridd  
CF37 5YR

[FOI.EconomyandTransport@gov.wales](mailto:FOI.EconomyandTransport@gov.wales).

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

**Mari Stevens**  
**Deputy Director, Marketing**

## **ATISN 12238 – APPLICATION OF EXEMPTIONS**

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Section 29, the economy, Section 41, information provided in confidence and Section 43(2), commercial interests, of the Freedom of Information Act 2000 (FOIA). All three exemptions apply to all of the information you have requested.

The section 29 and 43 exemptions are qualified (public interest tested) exemptions. This means that in order to engage them, the Welsh Government must show that the public interest in withholding the information is greater than the public interest in releasing it. Consideration has therefore been given 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, the wider effects of disclosure have been considered rather than any personal interest you may have in being provided with the information.

### **Section 29(1)(a)- the economy**

This exemption states that:

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

#### *Prejudice Test*

Releasing the information at this time would be likely to affect the Welsh economy as it would reveal to other UK administrations, each of whom have a similar competitive interest in increasing visitor numbers to their respective regions, details of its expenditure on videos of this kind. Given the current nature of the information, it would also reveal to bidders in future tendering exercises for similar work the financial considerations of the Welsh Government. Release of the information would similarly This would be likely to prejudice the economy of Wales and the public purse because the Welsh Government's financial considerations and negotiating position would be openly available in the public domain.

#### *Public interest arguments in favour of release*

The Welsh Government recognises there is public interest in there being openness and transparency within Government, particularly in terms of efficiency, effectiveness and in holding spending Departments to account. It is also recognised that disclosing the information might increase understanding of how public money is used to air the video referred to.

#### *Public interest arguments in favour of withholding*

The Welsh Government does not believe it is in the public interest to prejudice the public purse by disclosing its financial considerations to its competitors nor when undertaking future competitive tendering exercises for this type of work. The economy of Wales is

interlinked with the success of the promotional video in securing an increased visitor intake into Wales. Disclosure of the information would be likely to constrain the Welsh Government's ability to negotiate other commercial contracts if its commercial considerations were made public. This in turn would be likely to put at risk the economic interests of Wales and the public purse. Whilst it is recognised that, as a general rule, the sensitivity of information is likely to change over time, in this case the information captured is very much current information which we accept that over time may become less commercially sensitive.

The Welsh Government is therefore of the view that the public interest is best served by withholding the information in order to protect the wider economic interests of Wales and the public purse in order to ensure future tendering exercises are successfully completed without interference. This balance may change over time.

### **Section 41 – Information Provided in Confidence**

This exemption states that:

- (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.*

The information requested was provided to the Welsh Government by Smorgasbord Studio Ltd. in confidence as part of the invitation to tender process. It was provided on the explicit understanding that access to the information would be closely restricted and not placed into the public domain. Smorgasbord has not provided consent for the Welsh Government to make this information available to any party who asks for it. It also has its own duty of confidence in relation to its costs regarding contracts with third parties which participated in the making of the video. The information reveals details of how Smorgasbord structures, sources and prices a promotional video. As such the information is neither trivial nor is it publicly accessible.

Consequently I believe that the information is owed a legal duty of confidence and that disclosure without consent would result in an actionable breach of that confidence.

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

### **Section 43(2) – commercial interests**

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).*

#### *Prejudice Test*

Revealing the costing information would be likely to prejudice Smorgasbord's commercial interests should it be disclosed. The information reveals, for example, contributor fees and

commercial third party operator fees, information regarding the company's service providers and suppliers, profit margins, day rates and overhead costs. This information is very much current information which is being relied upon by the company to negotiate rates with its suppliers and contractors. The company's supply chain includes Welsh companies. It is similarly being relied upon in bidding for other work of a similar nature. Smorgasbord has a legitimate commercial interest in ensuring that it delivers best value for the work it has been commissioned to undertake by the Welsh Government. To release the information revealing Smorgasbord's commercial position at this time would be likely to harm its ability to competitively deliver upon its agreement with the Welsh Government. It would similarly be likely to harm the company's commercial position when competitively bidding for future work if other bidders are aware of the company's commercial position.

#### *Public interest arguments in favour of release*

The Welsh Government accepts 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. Given that the video is for public airing with a well known public figure, the Welsh Government accepts there is a public interest in understanding the process for awarding the contract for this work and allowing scrutiny of the project as a whole.

#### *Public interest arguments in favour of withholding*

The Welsh Government does not believe it is in the public interest to place a small Welsh business at commercial risk by disclosing its detailed costing for producing promotional videos. To disclose the information into the public domain would provide the company's competitors access to detailed commercial information not otherwise available. This in turn would also be likely to affect the company's supply chain. Whilst this information would be likely to be of interest to the company's competitors when bidding for similar work, the Welsh Government does not believe it would be in the wider public interest to encourage this type of unfair competition in future public or other tendering exercise. The Welsh Government believes there is a public interest in ensuring that tendering for this type of work is able to continue unimpeded.

The Welsh Government is therefore of the view that the public interest is best served by withholding the information in order to protect the commercial interests of Smorgasbord Studio Ltd. This balance may change over time.