



14 June 2018

Request for Information – ATISN 12238

I wrote to you on 22 May in response to your e-mail of complaint.

I have conducted an internal review of your request in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request, or via the internet.

I note that you asked for 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 have considered your original request, the response issued by the Welsh Government on 15 May and your subsequent complaint. In undertaking my review, I can confirm that the views of the affected third party were taken into consideration in providing you with the response you received.

The response withheld the information under Section 29 (the economy), Section 41 (information provided in confidence) and Section 43 (commercial interests) of the Freedom of Information Act 2000.

The substance of your complaint was that not enough weight had been given to the importance of the Welsh Government being open and transparent about how it spends



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public money and that the people of Wales, including yourself, have a right to know how the Welsh Government spends every single penny it receives.

In reviewing your complaint I have considered three issues – the nature of the information, whether the release of the information would prejudice the interests of the Welsh Government or third parties and thirdly, the public interest test – whether the harm caused by releasing the information is outweighed by the public benefit of doing so. In doing, I have taken into account the views of the third party.

The Year of the Sea film referred to is a key element of a £4m multi-media, multi-market campaign to promote Wales internationally. Versions of this film exist in Welsh, English and German and the video has been used on television, video-on-demand, social media, digital marketing and for event marketing purposes. The material collated as part of the production process will also be used long-term for a wide range of Welsh Government purposes.

This asset was produced by a Welsh company that was appointed in 2015 through the Welsh Government's Communications and Services Marketing Framework. Information about the total contract value as well as individual lots is in the public domain via Sell2Wales. The contract covers the production of a wide range of creative assets to produce Wales for tourism and business purposes. This Framework will be renewed via a competitive process over the coming months.

Whilst some core costs are agreed in setting the initial Framework and contract/s, much of the detail is agreed on a project-by-project basis and negotiated by the supplier with the Welsh Government to ensure the best possible value for money. As part of this, the supplier also negotiates costs with its own supply-chain of sub-contractors, including production companies, artists, and editing houses. The main supplier, and many of the other companies, are Welsh firms.

The costs requested relate to a specific, tangible creative asset. Creative production companies regularly tender for this kind of project in a competitive, commercial environment and the total production cost, as well as the specifics, could be regarded as current, commercially sensitive information.

My view is that releasing these details, as well as a breakdown of component parts, represents a commercial risk to the main supplier and associated companies and individuals involved by placing them at competitive disadvantage when tendering for future work from the Welsh Government and others. Information such as this is regarded as a trade secret. Releasing the cost of the video would benefit competitors and disadvantage the current supplier who would not be able to access equivalent information from competitors. Releasing the breakdown of those costs would place into the public domain costing information compiled by the company in the course of detailed negotiations with a supply chain of production companies and other service providers and artists, many of whom are based in Wales. Again, that information would be likely to disadvantage suppliers and give others a competitive advantage when bidding for future work of this type.

In relation to the application of Section 43(2) (commercial interests), I am therefore satisfied that release of the total production costs and associated breakdown would be likely to prejudice the commercial position of affected third parties now and in the near

future. I am satisfied that the potential harm to the affected third parties from releasing this detail would outweigh the public interest of releasing it. I further believe the public interest very much rests with the Welsh Government protecting the small businesses it supports from such prejudices.

Turning to the likelihood that the release of the information would cause harm in relation to Section 29 (the economy), I have concluded that it would not. Whilst I accept that in marketing Wales the Welsh Government is effectively acting as a commercial organisation which is in competition with destinations globally including other UK administrations, I do not believe we can be confident that releasing this information would be likely to prejudice the economy of Wales in this regard.

Section 41 (information held in confidence) of the Freedom of Information Act is not a qualified exemption and therefore there is no requirement to meet the public interest test. However, there is still a test at common law within this exemption to determine whether there would be a public interest defence for the breach of confidence. Guidance from the Information Commissioner gives the following examples of how the public interest could outweigh the confidence: where release would

- *further public understanding of, and participation in the debate of issues of the day;*
- *enable individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions; or*
- *facilitate accountability and transparency in the spending of public money.*

Arguments in favour of maintain the confidence are given as being:

- *the wider public interest in preserving the principle of confidentiality, and*
- *the impact of disclosure on the interests of the confider.*

In relation to the application of Section 41, I am satisfied the information was obtained from another person. Standard information about the framework contract is in the public domain. During negotiations the confider submitted that the information supplied over and above the standard information was to be treated as confidential. The affected third party has not provided consent to release this information and I do not believe there is public interest in breaching that confidence because of the subsequent impact its disclosure would be likely to have on the confider.

To conclude, I uphold your complaint in part in that I believe releasing the information would not be likely to prejudice the economy of Wales (Section 29). However, I am satisfied that it was correct to withhold the information under Section 43(2) (commercial interests) and the public interest in doing so, for the reasons outlined above. I am similarly satisfied, for the reasons outlined above, that the information was correctly withheld under Section 41 (information provided in confidence).

Nevertheless, the Welsh Government is committed to openness and transparency in providing information. Whilst I am satisfied that harm caused to the commercial interests of small Welsh firms by releasing both the cost of the video and the breakdown of those costs outweighs the public benefit of releasing information in that form, I can confirm that in relation to the Year of the Sea and leading into the Year of Discovery, total spend on the TV advert production as well as using this advert for television and video on demand advertising to date is £1,733,886 including activity in

June and July. As well as producing the film in multiple languages for use in Wales, across the UK and in Ireland, the film is and will be used for a wide range of other marketing purposes this and next year.

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

Yours sincerely

Jason Thomas
Director, Culture, Sport and Tourism