

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2017

Public Authority: Welsh Assembly Government
Address: Cathays Park
Cardiff
CF10 3NQ

Decision (including any steps ordered)

1. The complainant has requested copies of all emails received or sent by a named individual making reference to Ideoba. The Welsh Assembly Government provided some information but refused most of the information relevant to the request by virtue of sections 36(2)(b)(i), 36(2)(b)(ii) and section 36(2)(c). It also withheld a small amount of information by virtue of section 40(2).
2. The Commissioner's decision is that the Welsh Assembly Government has correctly withheld the information in reliance on sections 36(2)(i) and (ii) and section 40(2) of the FOIA. However, the Welsh Government incorrectly relied on section 36(2)(c).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information withheld solely by virtue of section 36(2)(c).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 June 2015, the complainant wrote to the Welsh Government and requested the following information:

"Please provide copies of all emails received or sent by [named individual] that makes reference to Ideoba."

6. The Welsh Government clarified its understanding of the request on 8 June 2015 and the complainant confirmed that this was correct on 16 June 2015, also confirming that the relevant time period was from October 2014.
7. On 6 July 2015, the Welsh Government wrote to the complainant informing him that it was considering refusing his request by virtue of section 43 of the FOIA but needed time to consider the public interest test. The Welsh Government further informed the complainant that it would write to him again by 31 July 2015.
8. The Commissioner also notes that in the same letter, the Welsh Government informed the complainant that if he was not satisfied with its handling of his request, he could ask it to conduct an internal review.
9. Following an internal review of the Welsh Government's procedural handling of the request, it contacted the complainant on 20 August 2015. It stated that:

"...consideration of the public interest test is being given to some of the information you requested, but not all of it...I can also confirm that your request is nearing completion and you should receive a full response within the next few days."

10. However, the complainant contacted the Commissioner regarding the Welsh Government's failure to respond which resulted in her issuing a decision notice (FS50609211) instructing the Welsh Government to issue a valid response.
11. The Welsh Government issued its response on 8 February 2016, and refused the request by virtue of the following exemptions:
 - Section 36(2)(b)(i) – inhibiting the free and frank provision of advice;
 - Section 36(2)(b)(ii) – inhibiting the free and frank exchange of views for the purposes of deliberation;
 - Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs
 - Section 29(1)(b) – the economy
 - Section 40(2) – personal data.
12. Following an internal review the Welsh Government wrote to the complainant on 9 March 2016. It confirmed that it was withdrawing its

reliance on section 29(1)(b), but it was maintaining its reliance on all sub-sections of section 36 specified in its original response, and section 40(2) of the FOIA.

Scope of the case

13. The complainant contacted the Commissioner 17 March 2016 to complain about the way his request for information had been handled. He confirmed that he is not satisfied with the Welsh Government's reliance on the exemptions cited to withhold the information falling within the scope of the his request.
14. The scope of the Commissioner investigation is therefore to consider the Welsh Government's reliance on the exemptions specified in paragraphs 11 and 12 of this notice.

Reasons for decision

Background

15. The Welsh Government provided some background information to the request. It explained that Ideoba Ltd approached it at the end of 2014 to request funding to enable the company to retain its Research and Development (R & D) Centre in Bridgend, safeguarding the position of six full-time staff, and to reach a point where receipt of market revenues would commence. The application was appraised in line with the Welsh Government's standard appraisal process which would usually involve requests for information considered to be commercially sensitive.
16. The Welsh Government has explained to the Commissioner that when a company approaches it seeking support, Officials involved with account management of businesses follow a set process. The process they follow is an accepted and embedded practice within the Welsh Government that has been derived from experience on handling general business enquiries. It added that they used resource tools to assist them in determining whether funding can be offered, including an online internal Customer Relationship Management (CRM) tool.
17. The Welsh Government further explained that the CRM tool captures core information about the business that is seeking advice and support including contact information, a description of the type of company and its purpose, a risk profile, priority level, project details (such as start and end date), which sector it falls within, the business location, the amount and type of funding required, value for money assessments,

and state aid considerations. Additionally, it also considers due diligence, credit and other financial checks and assessment of a business plan. All of this determines the worthiness of a project.

18. Where a project is considered viable and sits within Welsh Government priorities and ability to support, a more structured process is then followed whereby the company is asked to submit an application for funding. The application is formally assessed and the relevant account manager will prepare an on-line report with recommendations and advice to accompany the application which is then presented to an investment panel who ultimately decides whether or not funding can be provided.
19. The Welsh Government has further informed the Commissioner that there are a range of grant schemes to consider, some of which are restricted to specific applicants such as local authorities, businesses or voluntary organisations. Additionally, some support is bespoke to a particular company's needs and in this case, the email correspondence specified in paragraph 32 of this notice relates to the process of determining whether or not repayable business support and a bridging loan could be offered to Ideoba, together with other ad hoc business support considerations.
20. The Welsh Government made an offer to Ideoba in March 2015 subject to certain conditions. However, in April 2015 learnt that Ideoba had entered liquidation.
21. The Welsh Government confirmed that the emails captured by the request relate to this process and include emails seeking additional information from the company, and in particular, financial information required to inform the decision. They also include discussions amongst officials regarding whether or not the request should be supported and emails to the Minister's private office with advice about the company.
22. The Welsh Government considers that there is an added sensitivity to this information due to allegations regarding David Goldstone's involvement with the company. The decision making process was called into question at the time with the National Assembly Opposition leader R T Davies calling for an independent investigation into the role of David Goldstone in the decision making process, who he alleged may have been acting as an unpaid advisor to the Economy Minister (Edwina Hart) on this matter. However, the Welsh Government has informed the Commissioner that the allegations were subsequently shown to be untrue.

Section 36 – prejudice to the effective conduct of public affairs

23. Sections 36(2)(b)(i) and (ii) provide that information is exempt if its disclosure would, or would be likely to, inhibit the free and frank

provision of advice, or the free and frank exchange of views for the purposes of deliberation. Section 36(2)(c) provides that information is exempt if its disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs. These exemptions can only be cited where the reasonable opinion of a specified qualified person considers that these exemptions are engaged.

24. In order to engage any limb of section 36, the 'qualified person' must give an opinion that the prejudice would or would be likely to occur, but that in itself is not sufficient; the opinion must be reasonable.
25. To establish whether section 36 has been applied correctly the Commissioner considers it necessary to:
 - ascertain who is the qualified person for the public authority;
 - establish that an opinion was given;
 - ascertain when the opinion was given; and
 - consider whether the opinion was reasonable.
26. The Welsh Government consulted the First Minister about the requested information on 28 January 2016. He gave his opinion on 1 February 2016.
27. The Commissioner is satisfied that, under section 36(5) of the FOIA, the First Minister is the qualified person for the Welsh Government. Accepting therefore that a qualified person had given his opinion with regard to the application of the exemptions, it is incumbent on the Commissioner to consider next whether the opinion was reasonable in the circumstances.
28. In preparation for obtaining the view of the qualified person, the Welsh Government provided him with submissions that gave some background to the request, outlined the use of the exemptions in section 36 and why it was considered they applied in this case, and set out the recommended position. As stated, for an exemption in section 36(2) to be engaged it is not sufficient that a qualified person has given an opinion; instead, that opinion must be a reasonable one. The test to be applied is not whether the opinion is the most reasonable opinion but only whether it is an opinion that a reasonable person could hold. In other words, an opinion will only be unreasonable if it is an opinion that *no* reasonable person could hold.
29. For each limb of sections 36(2)(b) and (c) there are two possible alternatives upon which the application of an exemption can be hung depending on the qualified person's views on the likelihood of the prejudice occurring. Firstly, the lower threshold which states that disclosure 'would be likely to' have an inhibitive or a prejudicial effect

or, secondly, the higher threshold which stipulates that disclosure 'would' be prejudicial or inhibiting. 'Would' means that the likelihood is more probable than not. 'Would be likely', on the other hand, refers to a lower level of probability than 'would' but still requires that the likelihood is significant. Establishing the appropriate level of likelihood is not only important for engaging the exemption but also because it has an effect on the balance of the public interest test.

30. The record of the qualified person's opinion agreeing to the application of the exemptions in section 36(2) refers to 'would be likely'. It is therefore on this basis that the Commissioner has considered the representations in support of the various limbs of section 36(2) relied on.
31. With regard to sections 36(2)(b)(i) and (ii), it is understood that it is the process which may be inhibited rather than what is necessarily contained within the requested information itself. The vital question is whether disclosure could inhibit the process of providing advice or exchanging views in the future. Section 36(2)(c), on the other hand, refers to the prejudice that may *otherwise* occur through the release of the requested information. If section 36(2)(c) is used in conjunction with any other exemption in section 36(2), the prejudice envisaged must be different to that covered by the other exemption. In previous cases the Information Tribunal has found that the exemption may potentially apply to circumstances where disclosure could disrupt a public authority's ability to offer an effective public service.
32. The withheld information in this case consists of 82 emails with the relevant limbs of section 36(2) being applied either individually or in part to the information. Where the Welsh Government has applied two or more limbs of section 36(2), the Commissioner has looked first at sections 36(2)(b)(i), followed by section 36(2)(b)(ii) and finally 36(2)(c).

Section 36(2)(b)(i) – inhibit the free and frank provision of advice

33. Section 36(2)(i) has been applied to the following emails either independently in or in combination with other limbs of section 36(2). Numbers, 4,5, 13, 19-30, 39, 42, 43, 54, 65-68, 71-74, 78, 80 and 82.
34. Section 36(2)(b)(i) provides an exemption from the disclosure of information where it would be likely to inhibit the free and frank provision of advice.
35. The Welsh Government has stated that the above information relates to the provision of advice by Officials to Officials or by Officials to the Minister for the Economy Science and Transport, and the exchange of views between the Officials, and the subsequent sharing of that dialogue with the Minister for the Economy, Science and Transport

regarding options for supporting Ideoba Ltd and to which [named individual A] was a party.

36. The Welsh Government has argued that it is important that Officials are able to fully engage with each other and provide advice away from the public gaze. It further considers that there should be no disincentive in doing so. Additionally, it has argued that if Officials believed their advice or deliberations would be made public, it is likely that they would, in the future, be more inhibited in what they say and be less willing to engage in the free and frank exchange of views. This it considers would result in a less rigorous and in-depth exploration of options.
37. The Welsh Government further considers that it is normal practice for Officials to provide advice and exchange views in an open and frank way, and exploring various options as part of the process of deliberation. It considers that the disclosure of the requested information would mean that future discussions would be likely to be inhibited in that they would be less candid thereby leading to less rigorous and in-depth exploration of options and this in turn would harm its deliberations resulting in less robust and effective outcomes, thus compromising the effective working the Welsh Government with its stakeholders.
38. The Welsh Government has further informed the Commissioner that other emails marked for consideration under this limb of the exemption consist of correspondence received by a Director of Ideoba (items 22, 24, 25, 26 and 27) after it had become apparent that the funding required by the company would not be forthcoming. Some of the emails are based on the individual's speculative views. The correspondent had intended for some of the information to be published in the media, who were also copied into the emails. However, the Welsh Government has stated that this article was not actually published as the company distanced itself from the story which resulted in the paper deciding not to publish an article on the matter.

Section 36(2)(b)(ii) – inhibit the free and frank exchange of views for the purposes of deliberation

39. Section 36(2)(b)(ii) provides an exemption from the disclosure of information where it would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
40. The items withheld either solely or in combination with section 36(2)(c) are items: 2, 3, 11, 40, 41, 46-53, 55-64, 69, 70, 75-77, and 79.
41. The Commissioner notes that the Welsh Government has relied on the same arguments in respect of section 36(2)(b)(ii) as for section

36(2)(b)(i) outlined in paragraphs 35 to 37 of this notice. She has not therefore reproduced them in this section.

42. The Welsh Government has, however, further explained that it was a necessary part of the process for Officials to be able to provide advice and exchange views in an open and frank way, for fear of their advice and comments relating to the company being made public.

Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs

43. Section 36(2)(c) provides an exemption from the disclosure of information where it would otherwise prejudice, or be likely to prejudice the effective conduct of public affairs.
44. The information considered here was solely withheld by virtue of section 36(2)(c) and consists of items 1, 6-8, 12, 14-18, 31-38, 44, 45 and 81.
45. The Welsh Government informed the Commissioner that Officials believe that the release of this information would be likely to prejudice the effective conduct of public affairs and result in unadopted positions in connection with the options under consideration being exposed to public scrutiny. It has further argued that unless Officials are able to provide options and advice surrounding the possible offer of support to any company, the effectiveness of the possible support that could be offered and the process of reaching such a decision would be undermined, which in turn would be likely to prejudice the effective conduct of public affairs.
46. It further considers that it is important to avoid public resources being unnecessarily expended in explaining to the public the reasons for interim positions and/or why particular options were not subsequently chosen. In this particular case, the Welsh Government provided statements to the media which explained the final position on this matter. For example:

“We worked closely with Ideoba to bring the business to Wales, with the potential to create 100 jobs over three years. Full due diligence is always carried out before we offer financial support to any business, but it is impossible to entirely eliminate risk. If a company fails, like Ideoba, we will make every effort to recover as much of our investment as is possible.”

47. The Welsh Government had added, that the information represents the personal views of an individual which, if released, would be likely to bring the Welsh Government and the process of supporting businesses into disrepute.

Is the qualified person's opinion reasonable?

48. In reaching a view on whether the exemptions under section 36(2)(b) are engaged in this case the Commissioner has taken into account the fact that the documents in question were intended for a limited audience within the Welsh Government and were not intended for wider dissemination.
49. The documents contain content that could be fairly characterised as free and frank and that relate to the provision of advice and / or the exchange of views regarding the funding request of Ideoba. The documents withheld solely under section 36(2)(c) relate to discussions regarding the request from Ideoba falling within the scope of the request, but which does not constitute the provision of advice or the free and frank exchange of views for the purposes of deliberation.
50. In summary, the Commissioner has found that the qualified person has given an opinion endorsing the application of each of the exemptions cited in section 36(2) and, furthermore, that the opinion in respect of both limbs of section 36(2)(b) was reasonable, however she is not persuaded by the arguments put forward in respect of section 36(2)(c). Having concluded that both sections 36(2)(b)(i) and (ii) are engaged, the Commissioner must go on to assess the public interest test.

The public interest test

51. Section 36(2)(b) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. The Tribunal in *Guardian Newspapers & Brooke v Information Commissioner & BBC*¹ indicated the distinction between the consideration of the public interest under section 36 and consideration of the public interest under the other qualified exemptions contained within the FOIA:

“The application of the public interest test to the s36(2) exemption involves a particular conundrum. Since under s36(2) the existence of the exemption depends upon the reasonable opinion of the qualified person it is not for the Commissioner or the Tribunal to form an independent view on the likelihood of inhibition under s36(2)(b), or indeed of prejudice under s36(2)(a) or (c). But when it comes to weighing the balance of public interest under s2(2)(b), it is impossible

¹ Appeal numbers EA/2006/0011 & EA/2006/0013

to make the required judgment without forming a view on the likelihood of inhibition or prejudice." (Paragraph 88)

52. As noted above, the Tribunal indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and thus 'does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant' (paragraph 91). Therefore, the Commissioner's view is that whilst due weight should be given to reasonable opinion of the qualified person when assessing the public interest, the Commissioner can and should consider the severity, extent and frequency of prejudice or inhibition to the subject of the effective conduct of public affairs.

The public interest in disclosure

53. The public interest in disclosure will always attract some weight simply by virtue of the inherent importance of transparency and accountability. This weight will generally increase the closer the requested information is to proposals of, or decisions made by, a public authority in relation to issues of strategic or operational importance.
54. The Welsh Government acknowledges the inherent public interest in the openness and transparency that release of the information would engender. It would also demonstrate that Government officials and Ministers are fully exploring all possible avenues so that business support decisions are based on sound evidence.
55. The Commissioner would wish to highlight that in this particular case, there was some concern regarding the failure of a company that the Welsh Government had previously invested in and the appropriate level of risk it should be prepared to accept when investing public money. Disclosure of the disputed information would therefore address this issue.
56. As discussed in paragraph 22 of this notice, at the time in question, the National Assembly Opposition leader R T Davies called for an independent investigation into the role of David Goldstone in the decision making process, who he alleged may have been acting as an unpaid advisor to the Economy Minister (Edwina Hart) on this matter. The Welsh Government has confirmed to the Commissioner that the allegations concerned a financial interest which Mr Goldstone denies. The Welsh Government has further informed the Commissioner that the Wales Audit Office reviewed the Ideoba files and found no evidence to support the allegations.

Public interest in withholding the requested information

57. In many ways the arguments advanced by the Welsh Government in favour of maintaining the exemption, reiterate and develop the concerns expressed about disclosure set out in the submissions presented to the qualified person.

Section 36(2)(b)(i) and (ii)

58. The Welsh Government has argued that it is heavily reliant on Government Officials being able to provide advice and exchange views in an open and frank way, exploring various options as part of the normal working process. This provides the Welsh Government with the space and freedom to hold such discussions and provide advice in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than necessary.
59. It has reiterated that the withheld information relates to the exchange of views and provision of advice by Officials to Officials or by Officials to the Minister for the Economy Science and Transport, regarding options for supporting Ideoba.
60. It argues that it is in the interests of good governance to produce the best advice available to Ministers, and that to fully explore all options, Officials must be able to speak and debate freely. It considers Officials would be less likely to fully engage in the provision of advice or in exchanging views if they thought their free and frank deliberations and advice would be revealed. It believes that this would result in less strenuous and in-depth exploration of options and potentially less robust and effective recommendations, which is has argued would not be in the public interest.

Balance of the public interest

61. Having considered arguments both in favour of disclosure and in favour of maintaining the exemption, the Commissioner acknowledges that generic public interest in transparency and accountability so that the public can be certain that Government Officials and Ministers have fully explored all possible avenues in respect of applications for business support, and that the decision is based on sound evidence.
62. The Commissioner also notes the public interest in disclosure of information where there have been concerns regarding the robustness of the decision such as those raised by the leader of the Welsh Assembly Opposition, R. T Davies. However, the Commissioner notes these allegations were subsequently shown to be untrue and has therefore not accorded them much weight.

63. Additionally, emerging from the Welsh Government's arguments in support of maintaining the exemption, is the significance it has placed on the risk of a 'chilling effect' occurring through disclosure. Broadly speaking, the claim of a 'chilling effect' is directly concerned with the argued loss of frankness and candour in advice which, it is supposed, would lead to poorer quality advice and less well formulated decisions.
64. Whilst the Commissioner accepts these arguments, she would also point out that Officials and Ministers have a vested interest in ensuring that decisions they make in respect of business support are based on sound evidence otherwise their decisions would be vulnerable to criticism.
65. However, a significant factor when considering where the balance of the public interest lies is the situation at the time of the request, with greater weight being accorded where the matter is still live or recent.
66. The Commissioner notes that the request was dated 8 June 2015, with the withheld information covering a period from February 2015 to June 2015. Whilst the company had failed by mid- April 2015, the formal dissolution of the company was not until 19 July 2015. Therefore, although the decision had been made by the time of the request, it was still very recent, with the last few items of correspondence being a matter of days before the request.
67. Taking all of these factors into consideration, the Commissioner has concluded that the balance of public interest is weighted in favour of maintain the exemption and that the Welsh Government correctly withheld the information by virtue of sections 36(2)(b)(i) and (ii).

Section 40 – personal information

68. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
69. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

Is the requested information personal data?

70. Personal data is defined at section 1(1) of the DPA as:

"personal data means data which relate to a living individual who can be identified-

- (a) *from those data,*
(b) *from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*
71. When considering whether the information is personal data, the Commissioner has taken into consideration his published guidance: "*Determining what is personal data*".²
72. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
- (i) *"Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*
- (ii) *"Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*
73. The Commissioner notes that the information withheld under this exemption are emails to Ideoba from third parties setting out details of potential investments. Ideoba shared the emails with the Welsh Government to evidence interest from potential investors in support of its request for funding. The Commissioner is therefore satisfied that that the information withheld under this exemption does constitute personal information as defined by the DPA.
74. The Welsh Government considers that disclosure of the disputed information would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

75. The first data protection principle requires that the processing of personal data be fair and lawful and,
- a. at least one of the conditions in schedule 2 is met, and

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

- b. in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.

76. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

77. In his consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- a. The reasonable expectations of the data subjects.
 - b. Consequences of disclosure.
 - c. The legitimate interests of the public

The reasonable expectations of the data subject

78. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.³ Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

79. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, not all information relating to an individuals' professional or public role is automatically suitable for disclosure.

³http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/PERSONAL_INFORMATION.ashx

80. In this particular case, items nine and ten of Annex 1 have been withheld solely on the basis of section 40(2) of the FOIA. As stated in paragraph 73 of this notice, the information consists of emails to Ideoba from third parties setting out details of potential investments. Ideoba shared the emails with the Welsh Government to evidence interest from potential investors in support of its request for funding, and the Welsh Government has argued that those individuals would have no expectation that their email to Ideoba which contained data about personal investments, would be made public.
81. The Commissioner accepts that the individuals to whom this information relates were acting in a personal capacity and the emails sent were to a private company, albeit one that had requested public funding from the Welsh Government. She considers that these individuals would have had no expectation that their emails and their content would be made public.

Consequences of disclosure

82. The Commissioner acknowledges that the information concerns the identity and details of potential investors. The Welsh Government considers that there could be negative consequences for those individuals from the disclosure of such information.
83. The Commissioner considers that disclosure of the disputed information is likely to cause damage or distress to the individuals who are the subject of this information.

The legitimate public interest in disclosure

84. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
85. The Welsh Government does not consider that there are any legitimate interests in the public having access to third party personal data regarding potential private investments. The Commissioner has accepted this line of reasoning.
86. In weighing up the balance therefore between the reasonable expectations of the data subject and the consequences of disclosure the disputed information, against the legitimate public interest in disclosure, the Commissioner has no hesitation in concluding that the balance is weighted in favour of non-disclosure. Consequently, she is satisfied that the Welsh Government appropriately withheld the disputed information on the basis of section 40(2) of the FOIA.

Right of appeal

87. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

88. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
89. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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