

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 November 2011

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to Powys Fadog and negotiations relating to the River Lodge Hotel, Llangollen. Some information was disclosed and other information withheld under section 40(2) of the Freedom of Information Act 2000 ('the Act').
2. The Commissioner's decision is that the Welsh Assembly Government ('the Welsh Government') correctly applied section 40(2) to the remaining withheld information. The Commissioner also accepts that the Welsh Government has disclosed the information it holds relevant to the request, except for information which is has correctly withheld under section 40(2). The Commissioner has identified procedural shortcomings in the way the Welsh Government handled the complainant's request but requires no steps to be taken.

#### Background

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3. The request in this case relates to a property known as the River Lodge Hotel, which was purchased by the Welsh Government in March 2007. The Welsh Government subsequently entered into negotiations with Powys Fadog, a local social enterprise with a view to developing the property to secure an acceptable community use for the building.
4. In June 2009 the Assembly Government and Powys Fadog entered into an Agreement for Lease for the property. This lease was subject to a number of conditions including that Powys Fadog undertake remedial and improvement works to bring the property back into a good state of repair. A pre-condition to the lease being granted was that Powys Fadog

was required to demonstrate that it had secured funding to cover the cost of remedial works.

5. The Welsh Government has conducted a number of internal investigations into the River Lodge project. It has also undertaken an options appraisal assessment in order to consider the alternative options for future use of the site.
6. Decision notice FS50318915<sup>1</sup> is directly relevant to this case. Whilst the requests in both cases differ slightly, the withheld information, the exemptions which have been applied to the withheld information by the Welsh Government and the reasons for applying the exemptions are identical in both cases. In arriving at his decision in this case the Commissioner has therefore been mindful of his previous decision on case reference FS50318915.

## Request and response

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7. On 25 August 2010 the complainant wrote to the Welsh Government and requested information in the following terms:  
  
"Any e mails or paperwork either to or from, or on behalf of, Rhodri Morgan concerning Powys Fadog and Assembly negotiations with regard to the River Lodge Hotel, Mill Street, Llangollen. I would like to request any information/communication that has taken place since January 2009".
8. The Welsh Government responded on 25 October 2010. It confirmed that the information it held relevant to the request had been the subject of an earlier information request. It provided the information which had been released in relation to the earlier request, which consisted of a number of documents. Some of the information contained within the documents was withheld under sections 40(2) and 31(2)(b) of the Act. A small amount of information was redacted as it was not considered to be relevant to the request.
9. On 20 November 2010 the complainant wrote to the Welsh Government and requested an internal review of its handling of the request.
10. The Welsh Government responded to on 2 December 2010. It re-confirmed that the information captured by the request had been the subject of an earlier information request. An internal review had recently

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<sup>1</sup> [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50318915.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50318915.ashx)

been conducted into the earlier request. The Welsh Government referred the complainant to the outcome of this review, available on its website. The Welsh Government also advised that the Information Commissioner was presently undertaking an investigation into its handling of this previous related request.

11. On 4 April 2011 the complainant wrote to the Welsh Government requesting a further review into the handling of the request. He questioned its continued reliance on section 31 of the Act as he understood that all investigations had been completed. In addition, the complainant queried the amount of information that had been withheld under section 40 as he did not feel that all the information could constitute personal data.
12. The Welsh Government responded on 18 April 2011. It confirmed that as a result of the Commissioner's investigation into the previous request, and following a change of circumstances it was able to disclose additional information contained within the relevant documents.

### **Scope of the case**

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13. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically complained about the information which had been withheld under sections 40 and 31. He also stated that he believed that "after two internal reviews that non exempt relevant material had not been provided". He also complained about the delays he had experienced in the handling of his request.
14. The Commissioner wrote to the complainant on 18 August 2011 to clarify the scope of his request. Following a discussion with the complainant on 5 September 2011, the Commissioner considers the complaint to be about the following issues:
  - Whether the information which had been withheld by the Assembly Government should be disclosed
  - Whether the information which had been redacted from the documents as it was considered "out of scope" by the Welsh Government is relevant to the request.
  - The delays experienced with the initial response to his request and the internal review response.

15. The remaining withheld information relevant to the request comprises of sections redacted under section 40(2) contained within the following documents:
- (i) Document A - letter dated 21 July 2009 from Karen Sinclair to Rhodri Morgan.
  - (ii) Document B – internal briefing about the River Lodge project attached to Document A.
  - (iii) Document C – letter dated 24 August 2009 from Rhodri Morgan to Karen Sinclair.
  - (iv) Document D – letter dated 21 September 2009 from Karen Sinclair to Rhodri Morgan.
16. A small amount of information in documents (i) and (iii) above has been withheld by the Welsh Government as it considered the information to be out of scope of the request.

### **Reasons for decision**

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17. Due to the circumstances of this case and the content of the withheld information, the level of detail which the Commissioner can include in this notice is limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself. The Commissioner has therefore produced a confidential annex which sets out in detail his findings. This annex will be provided to the Welsh Government but not, for obvious reasons, to the complainant.

### **Interpretation of request**

18. In this case it is necessary to first consider the scope of the request in order to determine whether the Welsh Government has complied with the Act. In particular the Commissioner must consider whether the request, when read objectively, includes the information which the Welsh Government has considered to be out of scope of the request. This consists of information which has been redacted from documents A and C as listed in paragraph 15 of this notice.
19. As stated in the background section of this notice, following the purchase of the property in question in 2007, the Welsh Government entered into negotiations with Powys Fadog with a view to developing the property. As a result of these negotiations, in June 2009 the Assembly Government entered into an Agreement for Lease for the

property with Powys Fadog. The Welsh Government has confirmed that it interpreted the request to be for information relating at the same time to both Powys Fadog **and** negotiations with regard to the River Lodge Hotel.

20. Having considered the wording of the request, the Commissioner accepts that it could conceivably be argued that the request could have been interpreted to mean information about Powys Fadog and, separately, information about negotiations with regard to the River Lodge Hotel. However, given the background to the River Lodge project and the involvement of Powys Fadog, the Commissioner accepts the Welsh Government's interpretation of the request as being for information relating to both Powys Fadog **and** negotiations regarding the River Lodge hotel, and he considers that this constitutes an objective reading of the request.
21. The Commissioner has considered the information that the Welsh Government has withheld as being out of scope of the original request, and he accepts that it does not refer to both Powys Fadog and negotiations regarding the River Lodge Hotel, and as such the Welsh Government was not required to consider this information for disclosure in response to the request.

#### **Section 40 – the exemption for personal data**

22. Section 40(2) of the Act states that information is exempt if it is the personal data of any person other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. There are, therefore, two steps to considering whether this exemption is engaged.
  - Does the information constitute the personal data of any individual aside from the requester?
  - Would disclosure of that personal data be in breach of any of the data protection principles?
23. As to whether the information is the personal data of an individual other than the requester, the definition of personal data is given in the Data Protection Act 1998 ('the DPA'). This states that for information to be personal data it must relate to a living individual and that individual must be identifiable from that information.
24. The withheld information comprises; the name of an officer in the Welsh Government who was involved in the River Lodge project and details of their involvement in the scheme, and the name of an individual who produced a briefing note relating to the River Lodge project. The

Assembly Government acknowledge that some parts of the withheld information, if read in isolation, may not constitute personal data. However, it believes that disclosure of parts of the withheld information could lead to identification of the individuals concerned.

25. The Commissioner accepts that a living individual can be identified from their name and is satisfied that the names which have been redacted constitute personal data. In relation to details of the officer's involvement in the River Lodge project, the Commissioner is satisfied that this information also constitutes the personal data of the individual as, he/she is clearly the focus of the withheld information. The Commissioner also accepts that, even if just the name of the officer was withheld, there is a reasonable prospect that he/she could be identified if the remaining information were to be disclosed.
26. The Commissioner accepts that the withheld information in the context of this request is personal data of individuals other than the requestor.
27. Turning to whether disclosure of this information would breach any of the data protection principles, the Commissioner has focussed on the first data protection principle. This requires that personal data shall be processed fairly and lawfully. The focus of this analysis is therefore whether disclosure would in general be fair to the individuals to whom it relates. In reaching a conclusion on this issue, the Commissioner has considered the reasonable expectations of the individuals involved, the consequences of disclosure upon them, and the legitimate interests of the public in accessing the information.
28. The Commissioner will consider the release of the withheld information in two separate groups, namely the information withheld from document B (the name of an individual who produced a briefing note relating to the River Lodge project), and the information withheld from documents A, C and D, (the name of an officer in the Assembly Government who was involved in the River Lodge project and details of their involvement in the scheme).

## **Document B**

29. The information which has been withheld from document B, comprises the name of an individual who produced a briefing note for Ministers relating to the River Lodge project. The Assembly Government's position in relation to this information is that the officer no longer works at the Assembly Government and was not employed there at the time of the request. Further, the Assembly Government confirmed that the individual occupied a position which was junior to its senior management team. It confirmed that the officer did not have a

public facing role, and was responsible for providing additional advice to a Minister from a political perspective. The Assembly Government is of the view that the officer would have had a reasonable expectation that his or her details would not be disclosed to the public at large and that to do so would be unfair.

30. The Commissioner has taken into account the fact that the individual in question occupied a post which is junior to the Assembly Government's senior management team. The Commissioner also notes that the information relates to the individual in a professional capacity and there are no 'private' considerations. The document in question was created in his or her role as a public sector employee. However, the Commissioner has taken into account the fact that the individual had no public facing role whilst working at the Assembly Government. The Commissioner also acknowledges the fact that the individual ceased to work for the Assembly Government before the request in this case was made. The Commissioner can therefore understand that he or she would reasonably expect their details not to be disclosed as neither their name nor their current work would be relevant to the River Lodge project.
31. Consequently the Commissioner considers that it would be unfair to release the name of the officer concerned in these circumstances and that disclosure would breach the first data protection principle.

### **Documents A, C and D**

32. The information which has been withheld from these documents comprises the name of an individual involved in the River Lodge project and details of their involvement in the scheme.
33. As stated in paragraph 17 of this notice, for reasons of confidentiality, the Commissioner's consideration of the Welsh Government's position in relation to information which has been withheld from these documents has been discussed in detail in confidential annex attached to this notice.
34. In summary, the Commissioner is satisfied that the individual in question would have had a reasonable expectation that the information would not be disclosed to the public at large. The Commissioner also considers that any disclosure would cause unwarranted interference to the rights and freedoms of the individual and that this would outweigh the legitimate interests of the public in disclosure.
35. Taking into account the arguments outlined in the confidential annex, and the nature of the withheld information, the Commissioner does not

consider that the legitimate interests of the public in accessing this information are sufficient to outweigh the individual's right to privacy.

36. In conclusion, the Commissioner finds that disclosure of this information would be unfair and that disclosure would therefore contravene the first data protection principle.

### **Procedural requirements**

37. The Act requires a public authority to respond to an information request within 20 working days of receipt of a request, and either disclose the requested information within this period or issue a refusal notice which explains the basis on which any information has been withheld. The Welsh Government did not comply with this requirement, both in terms of the information it disclosed on 25 October 2010 and 18 April 2011 and the refusal notice issued on 25 October 2010. The Welsh Government should ensure that such delays in responding to requests are not repeated in the future.
38. The Commissioner accepts that the Welsh Government's interpretation of the request constituted an objective reading of the request, particularly in view of the context of previous requests relating to the subject matter. However, in cases where there is more than one objective reading of the request, the Commissioner considers that a public authority should contact the applicant to clarify the intended interpretation of the request and so identify the information held relevant to the request. The Commissioner would like to remind the Welsh Government of its obligations under section 16 of the Act in dealing with future requests where there is potentially more than one objective reading of a request.

## Right of appeal

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39. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

40. 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.
41. 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** .....

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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**SK9 5AF**