

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2014

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

Decision (including any steps ordered)

1. The complainant requested various pieces of information about each of Wales' Enterprise Zones. The Welsh Government provided some information but withheld under section 29 of the FOIA information relating to the number of jobs created and safeguarded. The Commissioner's decision is that section 29 is not engaged, and that the Welsh Government has incorrectly withheld the requested information under section 29(1)(a) of the FOIA.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - disclose the information that it withheld under section 29(1)(a).
3. The public authority must take this step 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

4. On 6 February 2014, the complainant wrote to the Welsh Government and requested information in the following terms:

"What is the total funding the Welsh Government has provided to firms located in each of Wales' Enterprise Zones. Please break down the amounts by zones?"

How many jobs have been created in each of Wales' Enterprise Zones. Please break down the amount by zones?"

How many jobs have been retained in each of Wales' Enterprise Zones. Please break down the amount by zones?"

How many firms have relocated into an Enterprise Zone from another part of Wales since the zones were set up? If any have, where have they relocated from and to which zone?"

In supporting companies in the Enterprise Zones how much of the money has been in grants and how much in loans and at what rate (if loans were made)?"

5. The Welsh Government responded on 5 March 2014 and provided some information but withheld information relating to parts 2 and 3 of the request under section 29(1)(b) of the FOIA.
6. On 14 March 2014 the complainant wrote to the Welsh Government seeking a review of its decision to withhold information relevant to the request under section 29(1)(b). He submitted a number of reasons why he believed the information should be disclosed.
7. The Welsh Government provided the outcome of its internal review on 11 April 2014. It stated that it was withdrawing reliance on section 29(1)(b) but instead it considered section 29(1)(a) applied to the withheld information. The Welsh Government also maintained that the public interest favoured non-disclosure of the information requested.

Scope of the case

8. The complainant contacted the Commissioner on 24 April 2014 to complain about the way his request for information had been handled.
9. The Commissioner considers this complaint to relate to the Welsh Government's refusal to disclose information held relating to parts 2 and 3 of the request and whether it applied section 29(1)(a) correctly.

Reasons for decision

Section 29 – the economy

10. The Welsh Government has withheld information relevant to parts 2 and 3 of the request under section 29(1)(a). Section 29(1)(a) of the FOIA states that information is exempt information if its disclosure would, or would be likely to, prejudice the economic interests of the United Kingdom or any part of the United Kingdom.
11. In order for a prejudice based exemption, such as those provided by section 29(1), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice, or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner takes the view that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority.

The Welsh Government's position

12. The Welsh Government has established seven Enterprise Zones across Wales, each focusing on a key business sector. A dedicated website has been set up which outlines to businesses the incentives for setting up their businesses in the Zones, including business support and access to finance, a business rate scheme and enhanced capital allowances. Whilst this support is geared towards growing existing businesses and attracting new businesses to one of the seven Zones, the fundamental aim of the scheme is to boost the Welsh economy by creating jobs and

sustainable growth, in accordance with the Welsh Government's long-term economic plan. The success of the Zones depends on the private sector as it is the private sector that will, ultimately, create the required jobs and sustainable growth the Welsh Government is striving for.

13. The Welsh Government estimates that 1,900 jobs will be created, safeguarded or assisted during 2014/15 and it has published core aggregate key performance indicator targets¹ in support of this.
14. Whilst delivery within the Zones is managed by the Welsh Government, each Zone works closely with the relevant local authority and other key stakeholder organisations in their area to provide the best possible conditions for businesses to succeed. Each Zone is driven by a Board which draws heavily upon the private sector and each Board member is an expert in their field. Each Zone is focused on a different centre of excellence in key business sectors including energy, finance and professional services, advanced manufacturing and materials, aerospace and ICT.
15. The Welsh Government confirmed that it has published aggregated data of the jobs created/retained for all Zones². However, it considers that if the information requested (a breakdown of jobs created, retained and assisted for **each** Zone) was published, it would be likely to prejudice the economic interests of both the individual Zones and the Welsh economy as a whole. This is because "releasing job figures on a zone by zone basis would be likely to prejudice the Welsh Government's ambitions in the longer term to deliver the wider economic benefits across Wales".
16. The Welsh Government advised that delivery within the Zones has focused on a range of options impacted by different conditions. Each Zone is being delivered at a different pace, dependent on and reflecting the local circumstances in each Zone and the willingness of the private sector to invest. The Welsh Government argues that, if job figures were released on a Zone by Zone basis the natural inclination would be to identify a league table amongst the Zones because of the different rates of development underway. Such a league table would be likely to

¹ <http://wales.gov.uk/docs/det/publications/131212-welsh-gov-ezw-key-performance-indicators-en.pdf>

² <http://wales.gov.uk/docs/det/publications/140522ezwkpi1213-1314en.pdf>

prejudice the economies of those Zones perceived as being 'lower down' the table, by inadvertently influencing investment decisions by companies in the private sector who would be likely to be more reluctant to invest in the Zones that were yet to attract significant job numbers. For example, the Welsh Government explained that one of the Zones has noted that there are limited short term solutions. As such, its focus is on creating an environment in which sustainable jobs will be created in the future and a considerable amount of work is being done to promote this. The likely prejudice to the economic interests of the Zones would have the knock-on effect of prejudicing the economy of Wales as a whole.

17. The Welsh Government is of the view that it is imperative to maintain a positive view of each Zone and each Zone needs to be able to maintain its own individual, unique selling points without undue influence from any focus on league tables and the broader context of their development. The Welsh Government considers that "This in turn would be likely to influence the broader surrounding economy allowing perception to overshadow reality", and it is important that no "shadow" is placed on those Zones pursuing strategic long term investment decisions.
18. The Welsh Government also referred to concerns expressed by the Boards of the Zones that disclosure of individual figures would be perceived as a league table of success of the Zone and has the potential to create competition within the Zones, rather than promote collective and collaborative working between them.

The Commissioner's position

19. As a prejudice-based exemption, a public authority seeking to rely on section 29(1)(a) must be able to demonstrate a link between the economic interests described and the harm that it considers may arise through disclosure. Further, the risk of prejudice occurring must be real and significant. The wording of the exemption makes plain that it covers communal interests rather than those of the individual; concerning information that would, or would be likely, to damage the economy of the UK as a whole or a regional or local economy.
20. According to a report published on the Welsh Government's website³, broadly speaking, the aim of the Enterprise Zones is to deliver benefits

³ <http://wales.gov.uk/docs/det/report/140326-longitudinal-survey-enterprise-zones-en.pdf>

through economic growth, job creation and sustaining existing businesses, supported by focused activity on specific geographic areas. The objectives are to:

- “Grow the local economy and provision of new jobs
 - Act as a catalyst for growth elsewhere in Wales
 - Improve the attractiveness of the Enterprise Zone for investors
 - Strengthen the competitiveness of the Welsh economy”.
21. The Commissioner accepts that information relating to Enterprise Zones will potentially fall under the section 29 exemption as it relates to managing and promoting the economy within the Zones themselves and more broadly across Wales. The Commissioner must therefore consider whether disclosure of the information requested would, or would be likely to, prejudice the economic interests of the regional or local economies. The Welsh Government appears to be applying the ‘would be likely’ threshold of prejudice to the information, and the Commissioner has proceeded with his considerations on this basis.
 22. Broadly speaking, the Welsh Government’s arguments are that disclosure of job figures on a zone by zone basis would be likely to lead to the formulation of a “league table” of the zones. This would in turn influence investment decisions and lead to a reluctance on the part of the private sector in investing in those zones which are lower down the league table in terms of the number of jobs created/safeguarded.
 23. The Commissioner is generally reluctant to accept arguments for withholding information based on the contention that disclosure might result in the information being misunderstood, misinterpreted or that the media might seek to misrepresent the information in order to provide sensationalised news stories. The Commissioner’s view is that it is generally possible to offset the potential for this to happen by issuing an accompanying statement placing the information in context.
 24. The Commissioner asked the Welsh Government whether it considered it possible to correct any misleading impression which might arise through disclosure, for example by publishing some context or explanation with the information. The Welsh Government acknowledged that contextual explanations could accompany the information, if disclosed. However, it was of the view that disclosure:

"...in such a way at this stage would be counterproductive as it would be likely to exacerbate the problem inherent in the perceived harm by drawing specific attention to it"

25. In addition, the Welsh Government considers that, even if contextual explanations were provided with the information, it would not deter the formulation of a league table of results. The Welsh Government confirmed that, on an individual Zone basis, it has released job and investment news around specific projects, the rationale for this being that reporting such investments can be a trigger for further investment to take place. However, it considers this to be a different proposition to disclosure of overall job figures on a Zone by Zone basis which would be likely to lead to the creation of a league table.
26. The Welsh Government advised that as the Zones develop their own identity, perceptions of their opportunities and challenges will become more broadly understood. At that stage the individual Board Chairs may consider that disclosure of job figures for the Zone would be appropriate and no longer considered to be damaging.
27. The Commissioner notes that there is a significant amount of information in the public domain about the individual Zones. There is a dedicated website for the Enterprise Zones⁴ which provides fairly comprehensive information about each Zone. The website provides general information along with information about the business environment, support and incentives and infrastructure and property for each Zone. In addition, each Zone has a "news" section which includes announcements about jobs created/safeguarded and other incentives and achievements in relation to specific projects. The Commissioner accepts that this is not the same as publishing overall job figures for each of the Zones, however, he considers that in reviewing the publicly available information, it would already be possible for people to formulate a view on job figures for each of the Zones.
28. The Commissioner accepts that there may be many reasons for a public authority to withhold information on an area's economy. That information may present a negative impression of the area's current or potential performance and its release could discourage investment.

⁴ <http://www.business.wales.gov.uk/enterprisezones/>

However, the Commissioner considers that a public authority would need to balance the level of damage to business confidence against the public interest arguments in favour of releasing information that would allow businesses to make fully informed decisions. A well informed business community may have the opportunity and incentive to prevent a problem deepening into a crisis and there may be other occasions where restricting access to information may make a problem worse.

29. In this case, whilst the Commissioner accepts that disclosure of job figures on a Zone by Zone basis could lead to a league table being formulated, he is not satisfied that the Welsh Government has provided sufficient arguments to demonstrate that it would not be possible to correct any misinterpretation or misunderstanding through issuing contextual explanations. In addition, the Commissioner considers that information on the number of jobs created/safeguarded in each Zone would be only one factor that would be likely to influence any decision to invest in a particular region. The Commissioner is of the view that any investment decision is likely to be made taking into account many other factors such as proximity to customer base, availability of skilled labour, transport links for supply and distribution, the cost of land and/or premises etc. The Commissioner is not, therefore, persuaded that disclosure of the information requested would be likely to deter the private sector from investing in a particular Zone.
30. The Commissioner also notes that there is a significant amount of publicly available information about the work being undertaken in each of the Zones. As well as the dedicated website, each Board provided representations to the National Assembly for Wales' Finance Committee's inquiry into Enterprise Zones which took place in 2013. A report on the inquiry was published in December 2013. Each Board provided detailed responses to the Committee in terms of their strategic objectives, specific incentives offered, outputs and outcomes expected and achieved to date etc.
31. Taking into account the representations made by the Welsh Government, it is the Commissioner's view that it has not, to date, submitted any convincing arguments to demonstrate how disclosure of the requested information in this case would be likely to prejudice the economy, or any evidence of the likelihood of a real and significant risk of prejudice occurring. For this reason, the Commissioner has concluded that section 29(1)(a) is not engaged.

Right of appeal

32. 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

33. 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.
34. 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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