

Freedom of Information requests

2011

Reference number: 11-011

11 October 2011

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Dear Mr.,

REQUEST FOR INFORMATION – *Information relating to the Operational Agreement between Amgueddfa Cymru and the City & County of Swansea, the provenance of the ceremonial spade and the capital and maintenance costs of the Museum's 'paternoster'.*

Thank you for your request for information. As Head of Knowledge and Information Management for Amgueddfa Cymru - National Museum Wales, I am responsible for responding to your request for information.

I refer to your email of the 7th September 2011 which you requested this information from CyMAL. On the 15th September 2011, CyMAL formally transferred it to the Museum. In your email you requested the following information:

- 1) *A copy of the Operational Agreement between Amgueddfa Cymru and the City & County of Swansea.*
- 2) *A copy of the true provenance of the ceremonial spade which was displayed without its provenance.*
- 3) *Details of the capital and maintenance costs relating to the Museum's 'paternoster', machines including the initial purchase price, installation cost per machine and the annual cost of maintenance and repair.*

In responding to your request for information, I will be referring to each element of your request separately.

1) A copy of the Operational Agreement between Amgueddfa Cymru and the City & County of Swansea.

Following receipt of your request searches were conducted within Amgueddfa Cymru to locate information relevant to your request. I can confirm that the information you have requested is held by Amgueddfa Cymru, however, I am unable to provide all of the information requested. Information with the Operational Agreement which relate to the use of CCTV cameras, financial matters which would effect future negotiations and information relation to personal information has not been released under the exemptions found with in Sections 31, 38 and 43 of the Freedom of Information Act 2000. For the remaining part of the Operational Agreement which I am able to provide, I have attached a *pdf* copy to my responding email.

The Operational Agreement is between the Council of the City and County of Swansea, the National Museums and Galleries of Wales and the National Waterfront Museum Swansea dated the 6th of October 2005.

Section 17 of the Freedom of Information Act 2000 requires Amgueddfa Cymru, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact;
- (b) specifies the exemption in question; and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

The following exemptions are applicable to the information requested.

Pages 28 and 30

On page 28, the 2005/06 budget cost for Security and on page 30, the information relating to the use of CCTV cameras have been withheld under Section 31 – Law enforcement of the *Freedom of Information Act 2000*.

Section 31 Law Enforcement

This exemption is applicable where releasing information would or would be likely to prejudice the prevention or detection of crime.

In this case it is felt that disclosure of this information would undermine effective law enforcement by jeopardising security matters and therefore, Section 31(1)(a) has be engaged.

Section 31 - Law Enforcement is a qualified prejudice-based exemption and, as such, I am required to apply both the harm test (prejudice) and

the public interest test. These are outlined below.

Harm in Disclosure

Releasing into the public domain information relating to the procurement and installation costs of security related matters could be of interest and use to criminal elements. This could help in their planning and execution of criminal acts, which could put staff and private individuals at risk.

Public Interest Considerations

Factors Favouring Disclosure

Disclosure would provide a better awareness of the costs of security facilities used; this is particularly relevant where expenditure of public funds is concerned.

Factors Favouring Non-Disclosure

Amgueddfa Cymru, the Council of the City and County of Swansea and the National Waterfront Museum Swansea are responsible for ensuring appropriate measures are in place within the National Waterfront Museum Swansea to prevent and allow for the detection of crime, while protecting the Museum's staff and public visitors. As outlined within the harm disclosure would undermine and compromise current and future prevention of detection of crime and potentially result in crime being committed.

Balancing Test

It is acknowledged that detailed information about resources allocated to protecting national institutions like the National Waterfront Museum Swansea is of interest to the public, however compromising the security of such a premises and the safety of staff and the public would not be in the public interest. Effective detection and prevention of crime is of paramount importance and therefore, it is our opinion that the balancing test favours non-disclosure.

In accordance with Section 12 of the Act please treat this letter as the Refusal Notice I am required to provide to you in respect of the detailed breakdown referred to above.

Pages 14 (section 6.5) and 33 (section 4.1.3)

On pages 14 and 33, information relating to the payment and income of the car parking facilities and licensing fees has been withheld under Section 43 – Commercial interests of the *Freedom of Information Act 2000*.

Section 43 – Commercial Interest

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).

In this case it is felt that disclosure of this information would undermine and jeopardise future negotiations between Amgueddfa Cymru and the City and County of Swansea. Amgueddfa Cymru may refuse public interest in maintaining the exemption outweighs the public interest in disclosing the information. This means that even if an exemption applies and Amgueddfa Cymru wishes to withhold the information, we must further consider whether it is in the public interest to do so.

Section 43 Commercial Interests is a qualified prejudice-based exemption and, as such, I am required to apply both the harm test (prejudice) and the public interest test. These are outlined below.

Harm in Disclosure

Releasing into the public domain information relating negotiated costs are likely to jeopardise future negotiations resulting in increased costs and drain on public funds.

Public Interest Considerations

Factors Favouring Disclosure

In applying the public interest test we have weighed up the legitimate interest of the public in knowing the negotiated costs associated with the public car park and effects of disclosure on future negotiations. We believe it is in the public's interest to know the negotiated costs, however, we also have considered the impact disclosure would have on future commercial interests and negotiations and the effect it would have on negotiations and securing an future agreement which is in the public interest.

Factors Favouring Non-Disclosure

Amgueddfa Cymru, the Council of the City and County of Swansea and the National Waterfront Museum Swansea are responsible for ensuring the best use of public money and the disclosure of this information is likely to prejudice future negotiations if released. As outlined within the harm disclosure would undermine and compromise future negotiations and potentially lead to additional funding being allocated from public funds.

Balancing Test

It is acknowledged that detailed information about negotiations is of interest to the public, however compromising future negotiations resulting in the increase requirement of public funds to be allocated would not be in the public interest. Effective negotiation is essential at a time when there is a great demand on public funds and therefore, it is our opinion that the balancing test favours non-disclosure.

In accordance with Section 12 of the Act please treat this letter as the Refusal Notice I am required to provide to you in respect of the detailed breakdown referred to above.

Page 45 to 54 inclusive (Schedule 9)

On pages 45 – 54 there is information relating to negotiations of staff transfer and salaries and this information has been withheld under Section 40 – Personal Information of the Freedom of Information Act 2000.

Section 40 – Personal information

The information you have requested was firstly considered under the Freedom of Information Act which states that all Personal Data is exempt from disclosure under Section 40(2) of the Act.

Section 40 (2) FoIA – Personal data exempt from disclosure

The information requested amounts to personal data and is exempt under section 40(2), FOIA, as disclosure, without the consent of the individuals to whom it relates, to a member of the public otherwise than under the FOIA would breach the first data protection principles. This exemption is absolute and is not subject to the public interest test. Therefore, the information requested is exempt under FOIA section 40(2) and will now be reviewed under the Data Protection Act 1998 (DPA).

Data Protection Act 1998 (DPA)

Section 1(1) DPA – meaning of “personal data”

Information relating to the staff employment negotiations and salary is considered personal data within the meaning of the DPA.

Part I of Schedule 1 DPA – first data protection principle

In our view, the disclosure of personal data to a third party would be unfair within the meaning of the first data protection principle. Part II of Schedule 1 to the DPA sets out how the principle of fairness is to be interpreted. It states that, in deciding whether personal data is processed fairly, regard must be had to whether any person from whom it was obtained is deceived or misled as to the purpose or purposes for which they are to be processed. In this case, the information relates directly to identifiable staff and the release of this personal information would be inappropriate.

In accordance with Section 12 of the Act please treat this letter as the Refusal Notice I am required to provide to you in respect of the detailed breakdown referred to above.

- 2) *A copy of the true provenance of the ceremonial spade which was displayed without its provenance.***

The information you have requested is attached to the responding email as a *pdf* document.

- 3) *Details of the capital and maintenance costs relating to the Museum’s ‘paternoster’ machines including the initial purchase price, installation cost per machine and the annual cost of maintenance and repair.***

The three sets of paternoster display cabinets were installed with the creation of the museum between late 2004 and August 2005. They became operational with the opening of the museum in October 2005.

The following are the details as requested:

Costs of constructing x3 Paternoster display units in the New Gallery at the National Waterfront Museum Swansea.

Paternoster housing construction	28,490.00
Paternoster housing glass	1,298.00
Paternoster housing Scena kicker lighting detail	9,830.40
Paternoster housing Page lacquer finish	12,240
Paternoster Mechanism	134,803.88
Set work electronics	3,895.08
Motorised Paternoster lift display with 10 glass Type A in steel	33,359.10
TOTAL for 3x Paternoster	223,916.46
Costs per unit	74,639.00

Annual maintenance costs for the Paternosters.

The total cost from October 2005 to September 2011: £14,529
Average annual cost of maintenance for the three set of cases: £ 2,422
Average annual cost for maintenance per set of cases: £ 807

Annual costs of repairs for the Paternosters.

Total cost of repairs from October 2005 to September 2011: £7,603
Average annual cost of repairs for three sets of cases: £ 1,267
Average annual cost of repairs per set of cases: £ 422

Your request was considered according to the principles set out in the National Assembly's Code of Practice on Public Access to Information (third edition). The Code is published on the Internet at www.information.wales.gov.uk.

If you believe that I have not applied the Code of Practice on Public Access to Information correctly or have not followed the relevant laws, please contact me to request a first-stage review. If, after that, you are still not satisfied you may request a formal review by the Museum. When dealing with any concerns, we will follow the principles of the National Museum of Wales' Code of Practice on Complaints, which is available on the Internet at www.nationalmuseumwales.org/en/45/ or by post to:

Amgueddfa Cymru – National Museum Wales
Parc Cathays, Caerdydd CF10 3NP/Cathays Park, Cardiff CF10 3NP
Ffôn/Tel (029) 2039 7951 Ffacs/Fax (029) 2057 3321
E-bost: post@amgueddfacymru.ac.uk/E-mail: post@museumwales.ac.uk

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Mr. Robin Gwyn
Director of Communications
National Museum Wales
Cathays Park
Cardiff
CF10 3NP

You also have the right to complain to the Information Commissioner.
Normally, however, you should pursue the matter through our internal
procedure before you complain to the Information Commissioner.
The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

Head of Knowledge & Information Management

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Parc Cathays, Caerdydd CF10 3NP/Cathays Park, Cardiff CF10 3NP
Ffôn/Tel (029) 2039 7951 Ffacs/Fax (029) 2057 3321
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