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14 May 2015

Reference 15-005 request for information – regarding St Fagans National History Museum Redevelopment Project: Construction Base Build

Thank you for your request for information. As Museum Secretary for Amgueddfa Cymru - National Museum Wales, I am responsible for responding to your request for information.

I refer to your letter of 30 March 2015, in which you asked for the following information:

1. *Copies of the pre-qualification questionnaires submitted by those shortlisted to tender.*
2. *The scores attributed to the above firm's pre-qualification questionnaires.*
3. *Copies of the technical /qualitative submission elements submitted by those shortlisted to tender.*

Response

Taking each of your questions in turn, we respond as follows:

1. *Copies of the pre-qualification questionnaires submitted by those shortlisted to tender.*

Your request for this information has been considered and I must inform you that the Museum is not obliged to supply all of this information due to some elements being exempt under the Freedom of Information Act. We have provided within the CD a summary of the submissions from the six organisations shortlisted to tender, with personal information and information that is commercially sensitive redacted. The exemptions applicable to the Information are therefore:

Section 43(2) Commercial Interest

Section 43(2) exempts information the disclosure of which would be likely to prejudice commercial interests. Although S.43 is subject to the public interest test, to which we have given careful consideration, we have decided that in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Llywydd/President Elisabeth Elias MA DL
Is-Llywydd/Vice President Dr Haydn Edwards MBA PhD FRSC
Trysorydd/Treasurer Laurence Pavelin CBE FCA
Cyfarwyddwr Cyffredinol/Director General David Anderson OBE
Rhif elusen / Charity registration number: 525774
Rhif TAW / VAT registration number: GB 783 4541 10

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This exemption applies because the disclosure of the requested information would be likely to prejudice the commercial interests of Amgueddfa Cymru and all those who have supplied detailed tenders.

In addition, the information is exempt under Sections 40(2) of the Freedom of Information Act 2000.

SECTION 40(2) 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 principle. This exemption is absolute and is not subject to the public interest test. Therefore, the information requested is exempt under FOIA section 40(2). Therefore, it 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 identity of individuals is personal data within the meaning of the DPA.

Part 1 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 identity of the employee(s) was provided for the sole purpose of providing information in support of the tender submitted by their employer. The principle of fairness, disclosure of the personal information would be unfair as the individual only provided the information for that purpose and not for public publication, and for that reason the information is being withheld.

2. The scores attributed to the above firm’s pre-qualification questionnaires.

These are set out in the attached CD.

3. Copies of the technical /qualitative submission elements submitted by those shortlisted to tender.

Your request for this information has been considered and I must inform you that the Museum is not obliged to supply this information due to the information being exempt under the Freedom of Information Act. The exemptions applicable to the Information are:

Section 43(2) Commercial Interest

Section 43(2) exempts information the disclosure of which would be likely to prejudice commercial interests. Although S.43 is subject to the public interest test, to which we have given careful consideration, we have decided that in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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The Information Commissioner’s Legal Guidance on the Data Protection Act (available on-line at www.informationcommissioner.gov.uk) advises that the Commissioner takes a strict view of the concept of compatibility. The Commissioner also cross-refers to the DPA’s interpretative provisions on the meaning of fairness, as set out in relation to the first data protection principle above.

The DPA says that, in determining whether personal data is processed fairly, regard is to be had to whether the data subject has been deceived or misled as to the purposes for which their personal data is to be processed. The Commissioner says that this is material in considering whether further processing is incompatible with the specified purposes.

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:

Mr. Neil Wicks
Director of Finance and Corporate Resources
Amgueddfa Cymru – 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

Elaine Cabuts
Museum Secretary