Ref: CORP 2021 - 104 Date: 28/10/2021

Dear \*\*\*\*

**Request under Freedom of Information Act 2000 and the Environmental Information Regulations 2004**

Thank you for your request for information in relation to the legal documents for the land swap between C&VUHB and Velindre University NHS Trust which we received on 16/09/2021.

***Your Request;***

It concerns land to the North of Whitchurch Hospital previously owned by C&VUHB and land off Velindre Road (current site of Velindre Cancer Centre) previously owned by Velindre Hospital Trust, and the land swap which occurred in 2019 or 2020.

1. A copy of the legal document for the land swap between Site 1: Land from C&VUHB to Velindre and Site 2: Land from Velindre to C&VUHB

2. A map (red line plan) of the relevant Sites associated with the land swap.

Please provide the information in the form of emails with electronic copies.

***Velindre University NHS Trust response is shown below;***

The Trust has processed your request under the Environmental Information Regulations 2004 (EIR) as the information requested is environmental according to the definition in regulation 2(c) of the EIR. Please note section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA, but requires us to consider it under the EIR.

The Trust can confirm that we hold the information you have requested, however the Trust is of the opinion this information be exempt from disclosure under Regulation 12(5)(e) of the EIR which is intended to protect the confidentiality of commercial information. This Regulation states:

‘*a public authority may refuse to disclose information to the extent that*

*its disclosure would adversely affect the confidentiality of commercial*

*or industrial information where such confidentiality is provided by law*

*to protect a legitimate economic interest.’*

The Information Commissioner’s guidance sets out four requirements necessary for this exception to apply. These are:

* The information is commercial or industrial in nature.
* Confidentiality is provided by law.
* The confidentiality is protecting a legitimate economic interest.
* The confidentiality would be adversely affected by disclosure.

In this instance the Trust is of the view in respect to the contract all four requirements are met because:

1. The information is commercial in nature because it relates to the sale of land which constitutes a commercial transaction.

2. Confidentiality is provided by law as there is a non-disclosure agreement attached to the transaction. Moreover, confidentiality is provided by the common law of confidence as the information is not trivial as it relates to still live commercial process for selling property assets and is considered to be commercially sensitive by the parties concerned. The information is not in the public domain nor has it been previously disclosed. In conjunction with this, the information has not been shared within the Trust beyond those requiring access to the information for relevant business purposes.

3. Confidentiality is protecting a legitimate economic interest because the requested information relates to live, ongoing matters and the request has been made at a time where publication may compromise the future marketing of the land sites for sale in the future. In the Information Commissioner’s terms this amounts to the protection of ‘a commercial bargaining position in the context of existing or future negotiations.’

4. On consideration of the above comments the Trust has concluded that disclosure of the withheld information would adversely affect the confidential nature of the documents.

The ICO guidance provides that:

‘*Although this is a necessary element of the exception, once the first*

*three elements are established the Commissioner considers it is*

*inevitable that this element will be satisfied.’*

**The public interest test**

Whilst the Trust believe we have demonstrated that disclosure would have an adverse effect on the confidentiality of commercial relations this is not sufficient for us to withhold the information, we must also establish that the public interest lies in maintaining the exception. Our findings are set out below.

**Public interest factors in favour of disclosure**

As with any request for information there is a general presumption in disclosure to promote openness and transparency since this allows for greater scrutiny and accountability of public authority’s activities.

In this instance there has been a large amount of media and public interest and it has been considered a contentious issue. Disclosure would be of particular interest and would foster public confidence in our processes, procedures and decisions.

**Public interest factors against disclosure**

Set against this, providing the information at the present moment, would not be in the public interest.

This is because as a publicly funded organisation, any publication at this present time may compromise the future marketing of the land sites for sale in the future.

In direct terms, putting commercially confidential information which is protected by law into the public domain would affect future marketing confidence and the Trust’s reputation as a trustworthy commercial partner. This would potentially compromise our ability to obtain value for the public purse.

Considering the arguments above, the Trust has concluded that the public interest favours maintaining the exception in this case, and that the information should be withheld.

While the Trust recognise the force of the arguments in favour of increased transparency and accountability, the Trust are ultimately of the view that the public interest is best served by protecting our revenues (and taxpayers’ money) and ensuring that we and our partners are able to operate commercial enterprises within the standard bounds of commercial confidentiality.

I trust this answers your request for information, however, should you not be satisfied with the information supplied or the process of supplying it, you have a right to complain and request a review. You should forward your complaint to:-

Mr Stuart Morris

Chief Digital Officer

Velindre NHS Trust

2, Charnwood Court

Heol Billingsley

Parc Nantgarw

Cardiff / Caerdydd

CF15 7QZ

Tel / Ffon - 029 20196161

Should you wish to take your complaint further, if you are still unhappy with the decision after review, you can contact the:-

Information Commissioner's Office - Wales

2nd Floor,

Churchill House,

Churchill Way,

Cardiff,

CF10 2HH

Telephone: 029 2067 8400

fax: 029 2067 8399

email: [wales@ico.gsi.gov.uk](mailto:wales@ico.gsi.gov.uk)

Yours sincerely

Julie Mann

Communication and Compliance officer

Velindre NHS Trust

2 Charnwood Court

Heol Billingsley

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