



Our Ref: ATISN 10203
Date: 14 April 2016

Dear ,

**ATISN 10203 – Communication regarding the OECD Reviews of Healthcare Quality
United Kingdom 2016 Report**

Thank you for your request to the Welsh Government for information under the Freedom of Information Act 2000, received on 16 February. You asked for:

- All correspondence, in any form, between Welsh Government Ministers, special advisors and/or officials and the OECD ahead of the publication of the report: *OECD Reviews of Healthcare Quality: United Kingdom 2016*.

The Welsh Government does hold information that falls under the scope of this request. However, following representations from the OECD to the Welsh Government, this information is being withheld from you under:

- Section 27 (International Relations)

The reasons for applying these exemptions are set out in full in the attached Annex A.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,

Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or email: FreedomOfInformationOfficer@wales.gsi.gov.uk

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

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

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,

Annex A

Section 27 – International Relations.

Background to the 2016 Report

OECD Reviews of Health Care Quality: United Kingdom 2016 Report seeks to highlight and support the development of better policies to improve quality in health care, to help ensure that the substantial resources devoted to health are being used effectively in supporting people to live healthier lives. The report on the United Kingdom is part of a series of publications reviewing the quality of health care across selected OECD countries and this report reviewed the quality of health care in England, Scotland, Wales and Northern Ireland.

To produce the report, the OECD met with stakeholders in each of the four nations and then produced a preliminary, draft report based on its findings. This draft report included a chapter specific to each nation, and a comparative chapter. The OECD shared each nation's chapter, and the comparative chapter, with them to check for factual accuracy and feasibility and gave them an opportunity to submit comments. It is the communication between Wales and the OECD during this process that is captured by this request.

Engagement of s.27 FOIA (2000).

Section 27 contains two closely related provisions: an exemption for information whose disclosure would or would be likely to harm UK interests, dealt with in s.27(1), and an exemption for information obtained in confidence from another state or international organisation or court, dealt with in s.27(2) and (3).

a) Prejudice to UK Interests - Section 27(1)

S.27(1) focuses on the effects of the disclosure of information and provides for information to be exempt under section 27(1) if its disclosure would, or would be likely to prejudice:

- a. relations between the United Kingdom and any other state
- b. relations between the United Kingdom and any other international organisation or international court
- c. the interests of the United Kingdom abroad
- d. the promotion or protection by the United Kingdom of its interests abroad

It is the view of the Welsh Government that section 27 (1) (b) would apply in this particular case: i.e. - would, or would be likely to, prejudice relations between the United Kingdom and any international organisation or international court

The reasons for this assertion are as follows:

'International Organisation'

The OECD is by definition an 'international organisation'. It is an international governmental organisation (IGOs) made up primarily of sovereign states (referred to as member states). The organisation describes itself as a forum of countries committed to democracy and the

market economy, providing a setting to compare policy experiences, seek answers to common problems, identify good practices, and co-ordinate domestic and international policies. Its mandate covers economic, environmental, and social issues. It acts by peer pressure to improve policy and implement "soft law"—non-binding instruments that can occasionally lead to binding treaties.

'Prejudice'

The information captured by this request includes emails between Welsh Government and OECD officials and working draft copies of the Assessment and Recommendations Chapter (the comparative chapter with comments from Wales) and Chapter 3: (Wales) of the report.

Following consultation with the OECD, it is the opinion of the Welsh Government that if this information were to be released, there would be a real and significant risk that it would prejudice relations between the United Kingdom (and its constituent parts) and the OECD and therefore impede future dealings between the two entities.

The OECD is mandated to work as a forum where its member governments can compare policy experiences, seek answers to common problems, identify good practice and coordinate domestic and international policies. To carry out this remit, the OECD is dependant on being able to freely exchange with its members on its work. Anything that could constrict this free flow of information and opinion would impede on the function for which the OECD was designed.

The reports produced, and the advice provided, by the OECD has a real impact on government policy in the UK. If communications between the UK and the OECD are subject to release to the general public, there is the potential that it would greatly impede the OECD's future ability to consult with the UK generally, including drafts of reports before publication. It is important that the OECD and the UK are able to fully engage with each other away from the public gaze and that there should be no disincentive in doing so. If officials believed their comments would be made public, it is likely they would, in the future, be more circumspect, be less willing to engage as freely in the future, leading to less rigorous and in-depth exploration of the material being produced.

Consequently we believe that disclosure of these emails and their attachments would damage this inherent trust between the OECD and the United Kingdom. This would hinder open and frank discussions that are necessary for the OECD for to carry out its mandate and the relationship between the OECD and the UK would therefore experience serious harm if these communications are released.

b) Section 27 (3)

Information is exempt under sections 27(3) if it is confidential information obtained from a state other than the United Kingdom, or from an international organisation or international court. Section 27(3) relates not primarily to the subject of the information, nor the harm resulting from its disclosure, but to the circumstances under which it was obtained and the conditions placed on it by its supplier.

Section 27(3) refers to the expectation placed on the information by an international organisation, non-UK state or international court, that it will be held in confidence by the UK public authority. Section 27(3), therefore, includes implied confidence.

It is the view of the Welsh Government that section 27(3) would apply in this particular case: i.e. information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

The reasons for this view are as follows:

'Implied Confidence'

The OECD depends on its members to hold discussions in confidence. Following consultation with the organisation, the OECD has confirmed that the exchanges between the Welsh Government and themselves were, and still are, subject to implied confidence.

The exchanges captured by this request consist of confidential discussions concerning the work in progress of the Comparative and Wales chapters of the report. The emails contain comments made in confidence and were intended only for the named recipients. The draft chapters discussed throughout the email correspondence were not ready for publication and were not intended for dissemination to the public at that stage. The OECD shares drafts with its members in confidence so that any inaccuracies can be corrected and any gaps addressed. Whilst there is no specific harm test under s.27(3), the OECD has commented that it believes that if this confidence is lost and these drafts are subject to release to the general public, this will greatly impede their future ability to consult its members on draft reports before publication. Drafts of reports can also potentially contain inaccuracies or lack information which could result in misleading readers and they also may contain preliminary conclusions which are later revised before publication.

In addition, as a member of the OECD, the United Kingdom (including Wales) is bound by the rules of the Organisation and in particular the decisions taken by the Council. The OECD Council Resolution on *Classification and Declassification of Information* provides that the security of official information must be ensured. For the purposes of the Resolution, official information can include correspondence. As such, the OECD protects email correspondence as it may contain confidential information and its members are expected to do the same.

Public Interest Test

Section 27(1)(b) is a public interest tested exemption. This means that, in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

I have considered the following public interest reasons in favour of disclosing the information:

There is a public interest in understanding the interactions between the Welsh Government and OECD during the production of the report. Greater public knowledge on these interactions can improve public trust and transparency. If the captured information is released into the public domain there is the potential for the public to gain a greater understanding of the process of the creation of a report such as this.

I have considered the following public interest reasons in favour of withholding the information:

It is the public interest to ensure close and effective working relationships between United Kingdom and the OECD. There is therefore a clear public interest in maintaining a climate of mutual trust and confidence between the two entities that are party to the information captured by this request. If the information is disclosed, there is the strong potential for this trust and confidence to be eroded. This would inhibit future collaborative working between both parties, marked by less willingness to share information and opinions with each other and in turn, undermine the relationship between the two. The consequence of which would be likely to hinder the ability of the OECD to continue to effectively carry out its function of policy development and improvement.

Assessment of Public Interest

In considering the assessment of public interest, consideration was given to the likelihood of the prejudice occurring and the impact of the prejudice, should it occur. It was concluded that disclosure would be likely to cause the prejudice outlined above and the public interest in disclosing the information captured by the request is outweighed by the public interest in withholding this information.