Llywodraeth Cymru
Welsh Government

Our ref: ATISN 10336
Date: 26 April 2016

Dear ,

Request for Information - ATISN reference 10336

Under your request for information (our reference) ATISN 10232, you asked for the following information:

Please provide details of all correspondence in relation to a future fiscal framework for Wales between the Welsh Government Ministers and officials and the UK Government?

In our acknowledgement letter to you under ATISN 10232 (our reference), we sought clarification from you on a number of points, including what you meant by the term "details" - which we interpreted to mean a list. As our interpretation had not been corrected in your email response of 26 February, a list was provided in our final disclosure. In your follow up email dated 25 March, you stated that you were seeking copies of the correspondence caught by your original request - not a list.

I have concluded the information you are seeking (i.e. copies of correspondence) is exempt under 2 exemptions, Section 28 - Relations within the United Kingdom and Section 35(1)(a) - Formulation or development of Government Policy. I have set out, in Annex 1, the arguments against these public tested exemptions.

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 1

Decisions relating to non-disclosure have been taken with due consideration to the following exemptions identified under the Freedom of Information Act 2000:

Section 28 Relations within the United Kingdom

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration.

and

Section 35 Formulation of government policy, etc.

(1) Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to –

(a) Formulation or development of Government Policy

Both exemptions are qualified (public interest tested) exemptions. This means that, in order to engage them, I must show that the public interest in withholding the information is greater than the public interest in releasing it.

The Welsh Government acknowledges that there is public interest in understanding the process by which the Welsh Government and the UK Government discuss certain policy matters. Further, the release of the information is likely to lead to greater transparency and openness in the way the Welsh Government conducts business with other administrations, which can improve accountability and public trust.

<u>Section 28</u>

However, there is public interest in ensuring a close and effective working relationship between UK Government departments and the Welsh Government. At a time when good relations and communication between the Welsh Government and HM Treasury are essential, given the on-going discussions on the development of a fiscal framework for Wales, there is a public interest in maintaining a climate of mutual trust and confidence between the Government departments that are party to the information that is captured. Agreement has not been reached with the UK Government on these matters, and negotiations are continuing between the Welsh Government and the UK Government.

If the information were disclosed, there is the potential for this trust and confidence to be eroded which would be likely to inhibit future collaborative working between both parties, marked by less willingness to share information and opinions with each other and, in turn, undermine any future negotiations between the two. The information being withheld involves subject matter which may still be privy to current and/or future considerations by the Welsh Government and the UK Government.

I believe the public interest is satisfied by the provision of regular up-dates by the Welsh Government on this matter. For example, the Minister for Finance and Government Business provided Written Statements on 1 February, 25 February and 9 March which highlighted key aspects of the negotiations:

http://gov.wales/about/cabinet/cabinetstatements/2016/welshtaxes/?lang=cy
http://gov.wales/about/cabinet/cabinetstatements/2016/welshtaxes/?lang=en

http://gov.wales/about/cabinet/cabinetstatements/2016/fairfiscalframework/?lang=cy
http://gov.wales/about/cabinet/cabinetstatements/2016/fairfiscalframework/?lang=en

http://gov.wales/about/cabinet/cabinetstatements/2016/welshtaxesupdate/?lang=cy http://gov.wales/about/cabinet/cabinetstatements/2016/welshtaxesupdate/?lang=en

Section 35

Communications between the Welsh Government and the UK Government at this stage include issues to inform and instigate debate and discussion on future policy in this area. Disclosure could add ambiguity rather than certainty to the public discourse and this would not aid the effective delivery of policy in Wales. Harm would be caused as information would be released which is still subject to further development and which would subsequently affect the implementation of Government policy.

Under both exemptions, I believe therefore that the balance of the public interest falls in favour of withholding the information, for the reasons outlined above.