



Dear ,

ATISN 10651 – Cymdeithas Tai Cantref Cyf

I wrote to you on 11 August 2016 regarding your request for information ATISN 10651. I undertook to provide a response by 30 August 2016.

In your request, you asked for:

Copies of all correspondence for the period November 2015 to July 2016 which relates to the financial difficulties/regulatory problems encountered by Cymdeithas Tai Cantref Cyf, including a copy of the report or reports which would explain and clarify the nature of these problems or technical breaches.

In relation to your request for copies of all correspondence, from my preliminary assessment I estimate that it will cost more than the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to answer your request. The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it.

In order to provide you with the information that you have requested would require checking every piece of individual correspondence received over a 9 month period. Consequently, I have decided not to provide you with the information you have requested.

You may wish to refine your request by narrowing its scope by being more specific about what information you particularly wish to obtain, including any

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dates or period of time relevant to the information required. If you do refine your request in this way, this will be treated as a new request.

In relation to the report, I can confirm that the Welsh Government holds information of the type described in your request. However, after due consideration I have decided that the information is exempt from disclosure under sections 40 and 43 (2) of the Freedom of Information Act.

The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

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:

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
The report by consultancy Campbell Tickell into Tai Cantref Housing Association, carried out under Welsh Government powers to launch a statutory Inquiry.	S40 Personal Information S43 (2) Commercial Interests

This Annex sets out our application of sections 40 and 43 (2) of the Freedom of Information Act.

Section 40: Personal Information

The Welsh Government believes that the Inquiry Report contains personal data about various members of staff which if disclosed may have harmful consequences to those concerned.

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

We have concluded that, in this instance, the information requested contains third party personal data relating to various members of staff. Under Section 40(2), personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first. This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that name of members of staff within the Inquiry Report clearly falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *If disclosure would not be fair, then the information is exempt from disclosure.*

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider

whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

In this instance, we believe that staff involved in the Inquiry would have no expectation that this information would be made public. Thus, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

Section 43 (2): Commercial interests

This exemption is engaged in relation to correspondence between Welsh Government and Tai Cantref regarding the Inquiry. Unlike section 40, section 43(2) is a public interest tested exemption. This means that, in order to withhold information under it, it has to be shown that the public interest in releasing the information is outweighed by the public interest in withholding it.

The Welsh Government acknowledges the inherent public interest in the openness and transparency that release of this information would engender. Release of the information could allow individuals to understand the rationale behind why decisions have been made and, in some cases, assist them in challenging these decisions

However, the Inquiry Report contains some evidence of mismanagement, details of which may destabilise the Association as they respond to the Inquiry's findings. Such a destabilisation would likely prejudice the commercial interests of the Association.

On balance, I believe the public interest in withholding the information is greater than disclosing the information. To that end, this information has been withheld under s43 (2)