



Our Ref: ATISN 10808

Date: 07 October 2016

Dear ,

ATISN 10808: Enquiry about Freedom of Information Requests

Thank you for your request which I received on 30 September. You asked for:

“topics and the responses of all the Fol requests made by Neil McEvoy for the last six months”.

Whilst neither confirming or denying whether the Welsh Government holds information of this description, I have decided that, if such information were held, it would be exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 (FOI Act).

Section 40 (2) of the FOI 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.

I consider that information regarding requests for information made by a named individual 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, I believe that individuals making requests for information to the Welsh Government under the FOI Act would have no expectation that their personal information and identity would be made public. Requests under the FOI Act are regarded as ‘applicant blind’ and when acknowledging such requests the Welsh Government clearly states that it will only use the personal information provided (name, address etc.) in accordance with the Data Protection Act 1998 to deal with their request and any matters which arise as a result of it. Thus, I believe release of the identity of requester’s and the nature of their requests would be unfair and so breach the first data protection principle. For that reason, the information would, if held, be withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

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