



Llywodraeth Cymru
Welsh Government

23 May 2017

Dear ,

ATISN 11250 - Chris Davies, MP, correspondence

Thank you for your request which I received on 24 April 2017 about correspondence between Chris Davies MP and the Cabinet minister for Education/Minister for Education, between the dates May 2015 and the present.

A copy of the information I have decided to release is enclosed – See the documents listed below and attached to the covering e-mail.

I have decided that some of the information described in the enclosed list is exempt from disclosure under section 40 (2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A 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 A – ATISN 11250 – J Jones – C Davies MP Correspondence with Welsh Minister / Cabinet Secretary for Education since May 2015

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
In all of the documents the personal information of 3rd parties is being withheld	Under sections 40 (2) of the Freedom of Information Act 2000
Doc 1 – HL-01399-15 redacted incoming	As above
Doc 1 - HL-01399-15 redacted reply	As above
Doc 2 – HL-01732-15 redacting incoming	As above
Doc 2 - HL-01732-15 redacting reply	As above
Doc 2 - HL-01732-15 redacted reply 2	As above
Doc 3 – HL – 01932-15 redacted incoming	As above
Doc 3 - HL – 01932-15 redacted reply	As above
Doc 4 – HL-02435-15 redacted incoming	As above
Doc 4 - HL-02435-15 redacted reply	As above
Doc 5 – HL-00263-16 redacted incoming	As above
Doc 5 - HL-00263-16 redacted reply	As above
Doc 6 – KW-05124-16 redacted incoming	As above
Doc 6 - KW-05124-16 redacted reply 1	As above
Doc 6 - KW-05124-16 redacted reply 2	As above
Doc 7 – KW-05087-16 redacted incoming	As above
Doc 7 - KW-05087-16 redacted reply	As above

Annex 1. Section 40(2)

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. Under Section 40(2) of the FOI Act, 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.

The first data protection principle.

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 there is information in the report that clearly identifies third parties and so 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 do not believe that the individuals writing to their MP or to the Welsh Government Minister would have any expectation that their personal 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.