

6th October 2017

Dear ,

ATISN 11544 – *Request for a copy of the redacted version of the Welsh Government-commissioned report into the housing association Tai Cantref which was supplied to the Public Accounts Committee.*

Thank you for your request which I received on 8th September 2017.

I have decided that the redacted version of the report from the Tai Cantref Statutory Inquiry is exempt from disclosure under section S36 (2)c of the Freedom of Information Act and is therefore withheld. The reason for applying this exemption 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
A copy of the redacted version of the Welsh Government-commissioned report into the housing association Tai Cantref which was supplied to the Public Accounts Committee.	Section 40. personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA Section 36 (2) (c) would otherwise prejudice the effective conduct of public affairs

This Annex sets out the reasons for the engagement of section 40 of the Freedom of Information Act, relating to 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 believe information contained in the redacted report will identify data subjects, that would clearly fall 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, the data subjects have no 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.

The Welsh Government also believes that the redacted version of the Statutory Inquiry report should be exempt from disclosure under Section 36 (2) (c) of the Freedom of Information Act.

Section 36(2)(c) – would otherwise prejudice the effective conduct of public affairs

Section 36 is a public interest tested exemption. That means, before information can be withheld under it, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

In relation to Section 36, the Freedom of Information Act has introduced a ‘two stage’ test. This means that the exemption cannot be engaged unless the qualified person agrees that it is. In relation to the Welsh Government, the qualified person is the First Minister for Wales.

Stage One. Reasons for engaging the exemption.

It was necessary to produce a specially redacted Inquiry report for the Public Accounts Committee. The redacted report was produced on a confidential basis, for the sole purpose of allowing PAC to discharge its functions.

The PAC committee is bound to the highest standards of probity. This specially redacted report allowed officials to strike a balance between the need for Committee members to have an understanding of the contents of the Inquiry report, and meeting the obligations to protect the personal data of those participating in the Inquiry and the commercial interests of the Association. The level of redaction in this report is however judged to be insufficient

to protect sensitive personal data of staff involved in the Inquiry as well as the commercial interests of the Housing Association if it was to be placed in the public arena.

On the basis of this, the First Minister has agreed that the exemption is engaged.

Stage Two: The public interest test.

The public interest in withholding the information is set out below. Section 36, states (inter alia):

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act:

(a) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Whilst the Welsh Government recognises report would be of interest to the social housing sector to provide clarity on the Inquiry findings, which at times have been subject of wide and sometimes misinformed speculation, the Welsh Government believes that a copy of the redacted version of the Statutory Inquiry report should be exempt from disclosure.

Individuals interviewed in the course of the Statutory Inquiry provided evidence which supported and led to the conclusions of mismanagement and misconduct at the Association. The individuals concerned cooperated with the investigation in good faith, on the basis their views and comments would be kept in confidence for the purposes of the inquiry only and not made public. In this case, release of even the redacted report would indicate to participants in future inquiries that there is a risk their contribution could be made public and that they might be identifiable with potentially harmful consequences to those concerned.

If participants were not confident their information and evidence would remain confidential within Welsh Government and not released into the public domain, they would be far less likely to participate in any similar inquiry in the future. Thus, releasing this information would be likely to prejudice the effective conduct of public affairs in that the Welsh Ministers would not be able to fulfil their statutory obligations for the reasons set out above.

To that end, the Welsh Government believes that release of the information would be likely to prejudice the effective conduct of public affairs and so should be withheld under s36(2)(c).