



9 November 2017

Dear ,

Request for Information – ATISN 11635

I wrote to you on 18 October regarding your request for information. You asked for:

- The Corporate Intelligence Report, also known as a Fit and Proper Persons Test, prepared by Grant Thornton and relating to Michael Carrick, as referred to by the Cabinet Secretary for Economy and Infrastructure during Ministerial Questions in the Senedd on 11 October 2017.

I confirm we hold information captured by your request. I have concluded, however, that it is exempt from disclosure under Section 40, personal data, of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given at the end of 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 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.



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding .

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Section 40 – Personal Data

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”*.

I have concluded that, in this instance, the withheld information within the Corporate Intelligence Report amounts to 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. I consider the principle being most relevant in this instance as being the first.

The first data protection principle 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.

I consider that the withheld information in relation to Mr Michael Carrick 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 1.4) states:

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).

Our analysis of the ICO’s key considerations in assessing ‘fairness’, as set out in the Guidance, are presented below.

The withheld information amounts to the personal data of Mr Carrick and other individuals. It includes details and findings of the work undertaken by Grant Thornton.. Grant Thornton gathered intelligence on the individuals in consultation with them and interviewed them in order to complete their report. In partaking in these interviews and consultations, there would be no expectation that their personal details would at any time be placed in the public domain. The individuals, including Mr Carrick, would not expect the sensitive and reputational personal data contained in the withheld information to be released, indeed Mr Carrick and the other individuals have in another context denied consent for the withheld information to be publicly released.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this personally sensitive information, and we do not see any legitimate reason why the personal details of the individuals should be placed into the public domain. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle.

For that reason, I believe the information should 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 .