



30 January 2018

Dear ,

Request for Information – ATISN 11800

I wrote to you on 2 January regarding your request for information in which you asked for:

1. A list of all meetings held between the Cabinet Secretary for Economy and Transport and the Secretary of State for Business, Energy and Industrial Strategy since June 2016.
2. A copy of all background notes and/or minutes of those meetings

I confirm we hold information captured by your request. Please note that details of Welsh Minister's meetings with external organisations and attendance at engagements are now published on the Welsh Government website at <http://gov.wales/about/cabinet/ministerial-meetings-and-engagements/?lang=en>.

The Cabinet Secretary has held five meetings (both over the telephone and in person) with the Secretary of State for Business, Energy and Industrial Strategy since June 2016, on 4 August, 2016, and 23 January, 16 March, 7 September and 16 November 2017. I have concluded that the background briefing and notes we hold should be withheld from disclosure under Section 28, relations within the United Kingdom, Section 35 policy and Section 40, personal data of the Freedom of Information Act 2000. Full reasoning for applying these exemptions is given 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:



BUDDSODDWYR | **INVESTORS**
MEWN POBL | **IN PEOPLE**

E&I FOI Team
Welsh Government
Treforest - QED Centre
Main Avenue
Treforest Industrial Estate
Pontypridd
CF37 5YR

EconomyandInfrastructureFOI@gov.wales
www.gov.wales

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.

Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or FreedomOfInformationOfficer@gov.wales. 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

ATISN 11801 – APPLICATION OF EXEMPTIONS

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Section 28, Relations within the United Kingdom, Sections 35, policy and Section 40, personal data of the Freedom of Information Act 2000 (FOIA).

With the exception of Section 40, the above exemptions are qualified (public interest tested) exemptions. This means that to engage them, the Welsh Government must show that the public interest in withholding the information is greater than the public interest in releasing it. Consideration has therefore been given to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request, the wider effects of disclosure have been considered rather than any personal interest you may have in being provided with the information.

Captured Information

The information we hold concerns briefing regarding the UK Industrial Strategy together with supporting documents, Tata Steel, the automotive sector and energy pricing.

Section 28 – Relations within the United Kingdom

This exemption relates to all topics, as described above. The exemption states:

28(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration

Prejudice Test

Releasing the information at this time would be likely to affect the Welsh Government's relations with the UK Government on the subject matters in question, which continue to be live matters of policy. If the Welsh Government were to release the information it would be likely to prejudice the on-going discussions with the UK Government on the matter.

Public interest arguments in favour of release

The Welsh Government acknowledges the general public interest in openness and transparency that release would engender. Further, we recognise that there is public interest in understanding the process by which the Welsh Government and the UK Government discuss certain policy matters and that the release of the information could lead to greater transparency and openness in the way the Welsh Government conducts business with other administrations, which can improve accountability and public trust.

Public interest arguments in favour of withholding

There is a public interest in ensuring a close and effective working relationship between UK Government Departments and the Welsh Government. Given the live nature of the matters being discussed, there is a public interest in maintaining a climate of mutual trust and confidence between the Departments that are party to the information captured.

Disclosure of the information which was generated within this climate of trust and expectation of confidence would be likely to result in the same trust and confidence being eroded and a reluctance to share information which would be likely to prejudice relations between both parties on both this and other matters, particularly on this issue where the withheld information involves a subject matter which may still pertain to current and or future considerations by the Welsh Government and the UK Government. Such prejudice would not be in the public interest.

I believe the public interest in this process is satisfied by information already in the public domain on the matters being discussed, or will be placed in the public domain at an appropriate time. For example, the Welsh Government has published its approach to the UK Government Industrial Strategy <http://www.assembly.wales/Deposited%20Papers/DP-1651-16-21.pdf/DP-1651-16-21.pdf>.

I believe therefore that the balance of the public interest falls in favour of withholding the withheld information for the reasons outlined above.

Section 35 (1)(a) – Formulation of Government Policy

The information caught by this exemption relates to the matters being discussed around the Industrial Strategy. This exemption states that:

(1) information held by a government department is exempt information if it relates to (a) the formulation or development of government policy.

Prejudice Test

Releasing the information at this time would be likely to affect the Welsh Government's formulation of its policy regarding the UK Government's Industrial Strategy. Whilst the UK Government has since published its Industrial Strategy, the Welsh Government is in ongoing discussions to ensure that Wales benefits from the strategy in practical ways. If the Welsh Government were to release the information before implementation of the strategy, it would be likely to prejudice the formulation of Welsh Government policy on the matter.

Public interest arguments in favour of release

The Welsh Government recognises the public has an interest in understanding the Government's considerations in the development of policy regarding the Welsh Government's joint working arrangements with the UK Government on delivering the UK Industrial Strategy. Policy and priorities in this area continue to be developed to ensure that Wales benefits from some of the initiatives set out in the strategy. I recognise that to release information now regarding on going discussions would promote awareness of the issues that Government is currently considering, as well as enhancing transparency in policy making decisions.

Public interest arguments in favour of withholding

As explained above, the Welsh Government is in ongoing discussions to ensure Wales benefits from the UK Government's Industrial Strategy in practical ways. Good government depends on being able to produce the best advice available and to discuss all the options without fear of premature disclosure. Welsh Government officials are engaging with

industry experts, the business community, partners, key stakeholders and organisations and in doing so, are speaking and debating freely and often exploring a variety of options in a free and frank exchange of ideas and experiences. I am of the opinion that some individuals would be less likely to engage in this way if they believed their thoughts would be revealed, and this would lead to a less strenuous and in-depth exploration of options and potentially less robust and effective policies.

I am aware that as a general rule, the sensitivity of information is likely to reduce over time so that the age of the information or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information and relates to policy still in development.

I believe there is sufficient information already in the public domain on this matter. As referred to above, the Welsh Government has already published its approach to discussions on the Industrial Strategy with the UK Government, which provides views on where we think the opportunities are and by inference the areas we are focusing upon in ongoing discussions. <http://www.assembly.wales/Deposited%20Papers/DP-1651-16-21.pdf/DP-1651-16-21.pdf>.

I believe, therefore, that the balance of the public interest falls in favour of withholding information as it relates to a policy that is still in development.

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 Departure Request 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 names and contact details 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 civil servants who do not have public facing roles and would not expect their names and contact details to be released in this context. There are set procedures in place for members of the public to contact both the Welsh Government using generic contact mechanisms. Having such systems in place means members of the public do not make direct contact with officials and avoids those officials dealing with potentially unnecessary and disruptive correspondence. In this context, the civil servants were providing briefing to Ministers as part of their normal course of business. In doing so, there would be no expectation that their personal details would at any time be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information. 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.