

Our ref: ATISN 11912
Date: 13 February 2018

Dear _____,

Request for Information – ATISN reference 11912

Thank you for your request which was received by the Welsh Government on 16 January 2018. You asked for the following information:

- All correspondence between the Welsh Government and the Irish Government since June 2016 regarding the European Union.
- All minutes of meetings between the Welsh Government and the Irish Government since June 2016 regarding the European Union.

I can confirm that we hold information captured by your request.

The Welsh Government also sent the Irish Government copies of the Securing Wales' Future White Paper and subsequent copies of policy series documents, which set out our position in the Brexit negotiations.

I have concluded that, in this instance, certain personal data should be withheld under Section 40 of the Freedom of Information Act 2000, such as names and contact details of third parties who would not expect these details to be released during the normal course of business. Details about the Section 40 exemption are at Annex 1.

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

Document summary

1	Letter from Damien O'Brien to Gearoid O'Keeffe referring to UK Chancellor of the Exchequer statement, 12/10/2016
2	Letter from Mark Drakeford to Paschal Donohoe TD referring to the Securing Wales' Future White Paper, January 2017
3	E-mail from Mike Pollard to Ireland Wales PMC members referring to Securing Wales' Future White Paper, 27/01/2017
4	Letter from FM to Taioseach on Brexit and Fair Movement of policy paper, 07/09/2017
5	Letter of invitation dated September 2017 from Cab Sec for Economy and Transport to Irish Gov to attend the Wales/Ireland World Cup Qualifier, September 2017
6	Letter from Mark Drakeford to Simon Coveney on FM mtg Taioseach and Securing Wales' Future paper, 19/09/2017
7	Email from Jane McMillan containing letter from Mark Drakeford to Chair and member of the Ireland Wales Programme Monitoring Committee sending copy of the Securing Wales' Future White Paper, 13 December 2017 and 14 December 2017

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Decisions relating to non-disclosure have been taken with due consideration of the following exemptions identified under section 40 of the Freedom of Information Act 2000.

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”.

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 and signatures 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.

Some of the withheld information amounts to the personal data of civil servants who 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 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 liaising with each other 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 same would apply to contact with 3rd parties]

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information, and we do not see any legitimate reason why the named officials or named 3rd parties need to be contacted directly. Because of this, it is my view that the release of such 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.