



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 11917
Date: 15 February 2018

Dear ,

Request for Information – ATISN reference 11917

Thank you for your request which was received by the Welsh Government on 17 January 2018.
You asked for the following information:

The release of all email and otherwise available correspondence between Special Advisers/senior/specialist/media/policy or otherwise in the Welsh Government and journalists at BBC and ITV during the period between Tuesday 7th November and Friday 22nd December?

The response to your request accompanies this disclosure letter.

In addition, the attachments to the e-mail of the 23rd of November are publically available at the following links.

Attachment 1:

<https://blogs.cardiff.ac.uk/electionsinwales/2017/11/27/the-november-welsh-political-barometer-poll/> [YouGov / Welsh Barometer Survey Results – published December 5th 2017]; and

Attachment 2: <https://blogs.cardiff.ac.uk/electionsinwales/2017/11/27/the-november-welsh-political-barometer-poll/>

A further e-mail of the 15th of November is also already in the public domain [Both links below contain the text of the e-mail]

<http://www.itv.com/news/wales/2017-11-15/new-pressure-on-first-minister-over-bullying-claims/>

<http://www.bbc.co.uk/news/uk-wales-politics-42008225>

I have concluded that, in this instance, certain personal data should be withheld under Section 40 of the FoI Act, 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

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 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 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 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]

Other information withheld under this exemption relates to the personal data of individuals who were liaising with civil servants in relation to routine business. In this context, the civil servants were liaising with those individuals as part of their normal course of business. In doing so, there would be no expectation by any of those concerned 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, 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.