



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 12004

Date: 6 March 2018

Dear ,

Request for Information – ATISN reference 12004

Thank you for your requests which were received by the Welsh Government on 1 February 2018. Which are being handled as one request. You asked for the following information:

Please provide copies of all correspondence (both sent and received) exchanged between:

Toby Mason and employees and/or directors of Deryn Consulting between 1 October 2017 and 31 January 2018, and

Toby Mason and employees of BBC Wales between 1 October 2017 and 31 January 2018

via the following methods of communication:

- a) all Welsh Government, private and personal email accounts;*
- b) SMS texts via Welsh Government and personal mobile phones and other devices (including laptops and tablets); and*
- c) Messages sent and received via Welsh Government and personal mobile phones and other devices (including laptops and tablets) using encrypted messaging apps such as WhatsApp and Telegram.*

The Welsh Government does not hold any information in respect of your request and Deryn Consulting.

I have however, concluded some of the information requested is exempt under Section 40 (2) of the Freedom of Information Act (2000). I have included my reasons for withholding information in Annex 1. That not caught by the exemption is contained within Annex 2 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,



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

Central Departments-FOI/DPgov.wales
Gwefan • website: www.cymru.gov.uk

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

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 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.

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.

Annex 2

From: BBC
Sent: 15 November 2017 12:27
To: Mason, Toby (OFMCO - Communications)
Subject: BBC Wales

Hi Toby
Hope you and the family are well
On background, just as a point of fact: who are Spads line-managed by?
Cheers

<http://www.bbc.co.uk>

This e-mail (and any attachments) is confidential and may contain personal views which are not the views of the BBC unless specifically stated.

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Please note that the BBC monitors e-mails sent or received.

Further communication will signify your consent to this.

From: Mason, Toby (OFMCO - Communications)
Sent: 12 December 2017 19:18
To: BBC
Subject: RE: James Hamilton

Hi *[information redacted]*, yes there will and we'll make it public in the near future – I'll make sure it goes to you.

Best

Toby

From: BBC
Sent: 12 December 2017 15:58
To: Mason, Toby (OFMCO - Communications)
Subject: James Hamilton

Interesting bloke.

For AMs like *[information redacted]* who wish to reach him, there will be a way to communicate with him. Can you advise?

From: BBC
Sent: 23 January 2018 11:23
To: Mason, Toby (OFMCO - Communications)
Subject: RE: BBC Wales: James Hamilton

Hi Toby
Any joy with this?
Cheers
[information redacted]

From: Toby Mason
Sent: 22 January 2018 17:02
To:
Subject: RE: BBC Wales: James Hamilton

Thanks *[information redacted]* – leave these with me.

Toby

From: BBC
Sent: 22 January 2018 16:27
To: Mason, Toby (OFMCO - Communications)
Subject: BBC Wales: James Hamilton

Hi Toby

Thanks for your time on the phone. As discussed, a few questions below for James Hamilton / his secretariat.

Cheers

1. Does James Hamilton intend to proactively contact anyone who he sees as potentially relevant (i.e. individuals other than those who submit written evidence)?
2. Does James Hamilton have the power to compel people to give evidence?
3. Do witnesses have any level of legal protection? For example, is their evidence given any privilege?
4. Would James Hamilton give a witness an assurance their evidence will not be referenced in his final report if the witness requests that?
5. 31/1 is the deadline for written evidence. Is there a timescale on the rest of the inquiry's work? i.e. an estimated publication date for the report?

<http://www.bbc.co.uk>

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Wrth adael Llywodraeth Cymru sganiwyd y neges yma am bob feirws. Mae'n bosibl y bydd gohebiaeth gyda Llywodraeth Cymru yn cael ei logio, ei monitro ac/neu ei chofnodi yn awtomatig am resymau cyfreithiol. 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. On leaving the Welsh Government this email was scanned for all known viruses.

Communications with Welsh Government may be automatically logged, monitored and/or recorded for legal purposes. 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.

From: BBC
Sent: 24 January 2018 10:50

To: Mason, Toby (OFMCO - Communications)

Subject: RE: BBC Wales: James Hamilton

Hi Toby

I'm doing a turn for Wales Live tonight on where we are with the various inquiries, including James Hamilton.

I am running the below quotes on some people being reluctant to give evidence to Hamilton.

Could you pass these on to JH / the secretariat to see if they would like to respond?

Cheers

Wales Live has spoken to people connected to the Welsh Government or Welsh Labour who say they have reservations about giving evidence (to James Hamilton's inquiry). One individual who used to work on the "Fifth Floor" - the government floor of the assembly building Ty Hywel in Cardiff Bay - doesn't want to give evidence for fear of recriminations:

"Wales is small, nothing is secret.

"I suspect people in government are actively scouting to find out who is submitting evidence. That fuels paranoia."

Another potential witness - themselves a member of the Labour party in Wales - said:

"I'm leaning towards giving evidence, but I am worried.

"If you put your head above the parapet within the party you make yourself a target.

"In these circumstances nothing is anonymous, people will know who said what.

"But I feel there is a responsibility to come forward."

Tamsin Stirling, who was a specialist policy adviser on housing to Carl Sargeant says she will give evidence but understands why others may not want to:

"As soon as you start talking about details of dates or particular issues, particular events, it's quite easy to identify people and if folk are worried about being identified in terms of any repercussions or anything then I really understand that.

"I suppose I'm in a slightly different position in that I was a specialist policy adviser rather than a political adviser"

"I haven't been a member of the Labour Party and I very much had a policy role rather than a political role.

"So I think my connections with government were different in that way.

"I thought about it for quite a long time and it's a personal decision and everyone has to make that personal decision."