



Our ref: ATISN 13091

Date: 5 April 2019

Dear ,

Request for Information Reference ATISN 13091

Thank you for your request which I received on 30 March in which you requested the following information:

*"I am extremely unhappy about this fraud and waste of our public money. Under the freedom of information I would like details of everyone involved at Welsh government in granting this money. Please could you send me details of all their names and their positions? Could you also tell me in what way they will be reprimanded for this ineptitude? Once I have all the information I would then like to arrange to meet you to discuss this matter."*

I am writing to inform you the Welsh Government is unable to provide this information to you. This is because the information you request is exempted under the Freedom of Information Act because it contains the personal data of another person.

### **Section 40(2) – Personal Information**

Section 40(2) FOIA sets out an exemption from the "right to know" if the information requested is personal information of someone other than the requester and is protected by the Data Protection Act 2018 (DPA) or the General Data Protection Regulation (GDPR).

Personal data is defined in Section 3(2) of the DPA as follows:

*"Personal data" means any information relating to an identified or identifiable living individual.*

### **The GDPR Principles**

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR and section 34(1) the DPA. There are six principles set out in this GDPR Article. We believe four of the six principles are relevant and these require that personal data must be:

- (a) processed lawfully, fairly and in a transparent manner in relation to individuals (first principle);
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (second principle);

- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (third principle);
- (f) processed in a manner that ensures appropriate security of the personal data (sixth principle).

In this instance, “processing” includes sharing the data outside of the Welsh Government and publishing it, which is what would happen were we to provide this information to you. The personal data of Welsh Government employees is collected in pursuance of our “public task” as a government and is handled in accordance with the Privacy Notice we provide to our employees. This Notice sets out the manner in which the Welsh Government will collect, process, store and use their personal data. It includes the security of their data and precludes the sharing and publication of that data without a clear lawful purpose. In considering the GDPR, we must consider what is in our Privacy Notice concerning employee’s personal data and what those employees would reasonably and fairly expect us to do with their data, based on that Notice.

### **Your Request for Information**

We consider that some of the information held which you have requested would fall within the description of personal data as defined by the GDPR and that its disclosure would breach the first data protection principle.

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. (paragraph 63).”*

We are of the view that, in this case, the release of information would be unfair and so breach the first data protection principle. There would be no expectation on our officials that information of this description would be placed into the public domain. For that reason, the information is withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

We also consider that release of this information would also risk breaching the second, third and sixth principles as we do not collect official’s personal data for the purpose of releasing it into the public domain.

We welcome the judgement on this case which has been ongoing for almost a decade. We co-operated fully with this investigation to ensure that public money was recovered and protected and tightened procedures to reduce the risk of this type of fraudulent activity happening again.

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: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@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