

15 February 2024

Dear

ATISN 20020 Ministerial Correspondence

Information requested

Thank you for your request, which I received on 18 December. You asked for correspondences between the Deputy Minister for Culture, Arts and Sport and the:

- previous and current Director of Museums Wales
- National Museums Wales
- National Library of Wales
- S4C

from January 2022 until 18 December 2023.

Our response

The information you requested is enclosed. I have not received a response to my email, dated 20 December 2023, seeking clarification as to which Directors, Chief Executive and/or Director General “previous and current Director of Museums Wales” refers. However, recorded correspondence between these individuals and the Deputy Minister for Culture, Arts and Sport is included as they are part of “National Museums Wales”.

Some of the information disclosed includes correspondence inviting the Deputy Minister for Culture, Arts and Sport to a visit or are requesting a meeting. Following the initial request, arrangements for Ministerial meetings and engagements are managed by the Diary Secretary with input from Welsh Government officials. Details of ministerial meetings and engagements are published on the Welsh Government website:

www.gov.wales/ministerial-meetings-and-engagements

Please note that I have decided that some of the information requested is exempt from disclosure under sections 40 and 41 of the Freedom of Information Act 2000 and is therefore withheld. The reason for applying this exemption is set out in full at Annex A to this letter.

Next steps

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

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 A

Application of exemptions/exceptions

The Freedom of information Act / Environmental Information Regulations provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

- Names and email addresses of correspondents – Section 40(2) – Personal information

This Annex sets out the reasons for the engagement of section 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Section 40(2) – Personal Data

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

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. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the

interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

The personal data is the names and other details of those individuals identified in the correspondence captured by this request, where such personal details are not already in the public domain. There is a legitimate interest in understanding the context of communications, and from which and to which organisations the correspondence was addressed.

2. Is disclosure necessary?

Disclosure of the personal data is not necessary for the legitimate interest, where we can provide the context of the request instead. By replacing the names with the context (e.g. WG Official 1 etc.) we are able to maintain the context for which a legitimate interest exists without disclosing personal data, which affects the fundamental rights of the data subjects under data protection legislation.

3. The balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms

Because the redaction meets the legitimate interest and so disclosure of the personal data is not necessary, there is no need to further consider the balance of interests, and the information is withheld.

Section 41 – Information Provided in Confidence

This applies to information covered by the legal settlement agreement between the parties involved.

Section 41 states that:

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Three items of correspondence cover, in their entirety, information relating to the dispute that are covered by the terms of a legal settlement agreement. Release under FOI is release to the world, not just the requestor, and publishing these items to the world would constitute an actionable breach of that agreement.

Consequently, I believe that the information is owed a legal duty of confidence and that disclosure without consent would result in an actionable breach of that confidence. Section 41 is an absolute exemption and is not, therefore, subject to the public interest test.