



Llywodraeth Cymru
Welsh Government

Dear

Request for Information – ATISN 15071

I wrote to you on 27 April and 11 May regarding your request for information.

Information requested

1. The cost of any publicly funded visits to Wales by travel journalist Simon Calder.
2. Any Visit Wales correspondence with or concerning the Museum of Military Medicine.

Our Response

I confirm we hold information captured by your request. For question one, Simon Calder spoke at the 2017 Tourism Summit held on 18 May. Mr Calder had a 35 minute agenda slot to give an “Overview of tourism industry trends on a global scale and the opportunities for Wales” which included a Q&A session. Visit Wales covered a standard economy return rail fare from London to Llandrindod Wells (£82.50 including VAT) and overnight accommodation on 17 May (B&B basis of £90). Mr Calder did not claim any subsistence costs.

The speaker fee caught by question 1 is being withheld under Section 43(2), commercial interests, of the Freedom of Information Act 2000. The information caught by your second question is being withheld under Section 29(1)(a), the economy, of the Freedom of Information Act and also under Section 40, personal information. Full reasoning for applying these exemptions is given 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.



Llywodraeth Cymru /
Welsh Government
Parc Cathays / Cathays Park
CF10 3NQ

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.

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.

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

ATISN 15071

The Freedom of information Act provides 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.

We have decided to withhold the following information:

- Question 1 – speaker fee.
- Question 2 - email exchanges relating to Visit Wales correspondence concerning the Museum of Military Medicine, specifically internal emails and email exchanges between the Welsh Government and a former Wales Tourist Board Member.

This Annex sets out the reasons for the engagement of section 43(2), prejudice to commercial interests, section 29(1)(a), the economy and section 40, personal information, of the Freedom of Information Act and our subsequent consideration of the Public Interest Test, where relevant.

Engagement of section 43(2) - prejudice to commercial interests

The Welsh Government believes that the speaker fee should be exempt from disclosure. The s43(2) exemption states that:

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The speaker fee is withheld from disclosure as it is considered to be sensitive, commercial information that Mr Calder would not expect to be put in the public domain. In addition, the negotiations between Mr Calder and the Welsh Government have been conducted in good faith, part of this being an assumed high-level degree of financial discretion. This information is not otherwise available and its disclosure would be likely to cause commercial prejudice to Mr Calder because it relates to his own personal speaker fee which is a commercially sensitive piece of information. All negotiations involving fees are conducted with the expectation that this information will not be broadcast.

Public interest arguments in favour of disclosure

The Welsh Government recognises the general public interest in openness and transparency and releasing the information would help the public gain a better understanding of the decisions made by Government. It is also recognised there is a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

Public interest arguments in favour of withholding

The speaker fee is commercially sensitive to Mr Calder and disclosure would be likely to cause him/his business commercial disadvantage. As with most businesses, Mr Calder works within a highly competitive journalism industry and disclosing the information would mean disclosing financial details and thereby providing Mr Calder's competitors with a level of information they otherwise wouldn't have. The Welsh Government is of the view that it is not in the public interest to generate such unfair commercial disadvantage. Rather, the public interest lies in being able to invite successful broadcasters such as Mr Calder to tourism events, for the benefit of Welsh tourism businesses.

The Welsh Government is aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information.

In conclusion, the Welsh Government is of the view that the balance of the public interest therefore falls in favour of withholding the information described above.

Engagement of section 29(1)(a) – the economy

The Welsh Government believes that the email exchanges caught by your second question should be exempt from disclosure. The s29(1)(a) exemption states that:

29.—(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
(a) the economic interests of the United Kingdom or of any part of the United Kingdom,

The information caught by your second question consists of email exchanges discussing potential overseas partners with the Museum and the economic benefits those relationships and partnerships could bring to Wales. The correspondence also discusses other potential collaborations between Wales and other countries which would, in turn, also bring economic benefits to Wales.

Public interest arguments in favour of release

It is recognised that there is public interest in there being openness and transparency within Government, particularly in terms of efficiency, effectiveness and in holding spending Departments to account. It is also recognised that disclosing the information might increase understanding of how public money is used to enhance relationships with overseas countries for the economic benefit of Wales.

Public interest arguments in favour of withholding

The economy of Wales is interlinked with the success of working with other countries and businesses to bring economic benefits to Wales. Exposing this information in the public domain would be likely to damage the trust between the parties involved thus jeopardising any future collaboration. This in turn, would be likely to put at risk the economic interests of Wales and the public purse.

Whilst it is recognised that, as a general rule, the sensitivity of information is likely to change over time, in this case the information captured is very much current information which we accept that over time may become less sensitive.

The Welsh Government is therefore of the view that the public interest is best served by withholding the information at this time order to protect the wider economic interests of Wales.

Engagement of S40(2) – Personal Data

The Welsh Government believes the personal data contained within question 2 of your request should be exempt from disclosure.

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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. Specifically, this relates to the names of junior Welsh Government officials and the name of a former Wales Tourist Board Member.

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 UK 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) of the UK GDPR. 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:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. 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 Interest Test

The Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication in order to follow the flow of that communication and to understand the views and positions expressed by each party. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand those communications. The views expressed in the communications are those of the respective organisations rather than those of the individuals concerned. As such it is irrelevant as to who made those comments. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. The Welsh Government officials are not senior staff members with public facing roles and would therefore not expect their names to be released into the public domain.

It is also not necessary to disclose the name of the former Wales Tourist Board member, especially as this person no longer has any involvement with the Museum.

Nor do we believe it is necessary to disclose the personal data in order to allow members of the public to contribute to this, or future discussions on this or any other matter. There are mechanisms by which the public can contact the relevant policy areas, such as generic mailboxes, public consultations, or writing to a Minister, etc.

3. The Balancing Test

As it has been concluded that there is no necessity to disclose the personal data of another individual, the fundamental rights and freedoms of the affected third party prevail in this instance and releasing the information cannot be justified under Article 6(1)(f).

Conclusion

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.