



Llywodraeth Cymru
Welsh Government

28 June 2020

Dear

ATISN 15185 – Communications and payments between Welsh Government officials and Gatenby Sanderson relating to public appointments

Thank you for your request which I received on 28 May asking for communications and payments between Welsh Government officials and Gatenby Sanderson relating to public appointments.

I have decided that some of the information described in the enclosed list is exempt from disclosure under sections Section 21, Section 40(1) or Section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions is because it is information either available publically or is personal data protected by the General Data Protection Regulation and Data Protection Act 2018. Some of the information relates to your personal data, including your application made for a public appointment vacancy. This data will be provided to you separately under the General Data Protection Regulation subject access request. The exceptions are set out in full in the annex to this letter.

There is some information, regarding content of planned interviews for public appointments and external access to a Welsh Government secure platform, which we are still considering as to whether it should be put into the public domain or not. I will write to you again by 23 July regarding this particular information.

You also requested information about payments made by Welsh Government to Gatenby Sanderson. I can confirm that no information was held, as no payments had been made at the time of your request. However, the agreed costs of the contract with Gatenby Sanderson are being released as part of this request.

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:



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE

Parc Cathays, Caerdydd .CF10 3NQ
Cathays Park, Cardiff. CF10 3NQ

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

ATISN 14198 - Correspondence between Gatenby Sanderson and Welsh Government officials

The Welsh Government has decided to withhold the following information:

Information being withheld	Section number and exemption name
Information provided for prospective candidates in relation to public appointments.	Section 21 of the Freedom of Information Act. Information reasonably accessible to the applicant by other means.
Information in relation to the content of planned interviews for public appointments and information in relation to external access to a Welsh Government secure information sharing platform.	There is further information which we are still considering as to whether it should be put into the public domain or not. I will write to you again by 23 July regarding this information.
Personal information in relation to the FOI requester.	Section 40(1) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.
Third party personal data contained within correspondence letter between Welsh Government and Gatenby Sanderson.	Section 40(2) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.

This Annex sets out the reasons for the use of Section 21, Section 40(1) or Section 40(2) of the Freedom of Information Act (FOIA).

Section 21 – Information publically accessible

The data we hold includes information provided for prospective candidates in relation to public appointments for Natural Resources Wales. We believe you already have access to this information as it is in the public domain.

Section 40(1) – Personal information in relation to the requester

Section 40(1) provides an absolute exemption if the requested information is the requester's personal data.

This data will be disclosed to the requester separately under the General Data Protection Regulation subject access request.

Section 40(2) – Personal Information

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 (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, by reference to an identifier such as a name, an identification number, location data, an online identifier or 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 General Data Protection Regulation (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

We are aware the requester is interested in Welsh Government's process for making public appointments and will be interested to understand Welsh Government's arrangements with Gatenby Sanderson in relation to public appointments.

2. Is disclosure necessary?

We do not consider the interests to be a legitimate reason to disclose third party personal information, including that of candidates who have applied for public appointments.

It is not necessary to release personal data in order to understand the process for making public appointments and our arrangements with Gatenby Sanderson to recruit suitable candidates for public appointments.

There is also a range of information provided for prospective candidates in relation to public appointments publically available.

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

We consider the release of this information has the potential to cause harm to the subjects and/or their family.

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.