



Llywodraeth Cymru
Welsh Government

Email request

Our ref: ATINS 15184
Date: 17 August 2021

Dear
Request for Information – ATISN reference 15184 – Deryn Consulting

Thank you for your request which was received by the Welsh Government on 12 July 2021.

I have considered your complaint in accordance with the procedure outlined in [Requesting information from the Welsh Government](#) which is available by post on request or via the internet.

I have included at Annex 1, my response to each of the points you raised in your request for an internal review. I have concluded that some of the information in scope is exempt under Section 40 Section 40(2) – Personal Data – I have set out the position on this exemption at Annex 2.

If you remain dissatisfied with this response you 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

Telephone: 0303 123 1113
Website: www.ico.org.uk

Yours sincerely

Peter Ryland

Annex 1

Your original request, our reference ATISN 15184, you asked the following:

Please tell me the number of contacts /meetings recorded between staff and/or directors of Deryn Consulting and Welsh Government Ministers and/or their special advisors between 01/05/2016 and 30/04/2021.

Where possible, please identify the mode of communication and the identity of the participants in those contacts/meetings.

How many of those meetings/contacts were minuted?

Following our disclosure under ATISN 15184 – you asked/stated the following under your request for an internal review.

During the inquest into the death of the late Carl Sargeant MS, former MS and former First Minister confirmed he held a long conversation with contacted Jo Kiernan of Deryn Consulting on November 7th, 2017. Nothing appears in the record.

As a further example, previous FoI requests made by others and answers given to members of the then Welsh Assembly said Carwyn Jones didn't have a personal mobile phone. There ought to be a record somewhere of all calls made from the mobile he used as FM to Deryn/Kiernan.

Those records would necessarily be caught by my request, as would emails sent from Minister's private email accounts discussing Assembly/Senedd business with Deryn Consulting.

A subsequent leak inquiry into the circumstances surrounding media briefings and leaks before Carl Sargeant's sacking by Carwyn Jones found there had been significant data traffic between the Welsh Government and Deryn Consulting.

Response

In revisiting your original questions in light of your request for an internal review, I can confirm:

Please tell me the number of contacts /meetings recorded between staff and/or directors of Deryn Consulting and Welsh Government Ministers and/or their special advisors between 01/05/2016 and 30/04/2021.

No further meetings have been identified beyond the information included in the initial disclosure. Following your clarification, further e-mails have been identified and are enclosed.

Where possible, please identify the mode of communication and the identity of the participants in those contacts/meetings.

The further contacts are all by e-mail. Nothing further beyond the previous information released has been identified.

How many of those meetings/contacts were minuted?

No meetings/contacts were minuted. However I have provided copies of the emails exchanges caught by your request – some information is withheld under Section 40(2) of the Freedom of Information Act (2000) – please see Annex 2.

Annex 2

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 1998 ('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. I have concluded that this relates to the names (and other associated personal information) of those exchanging correspondence.

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:

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 individuals involved in any discussions (to help understand the reason for their involvement).

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 - we do not believe it is necessary to disclose the personal data to understand the information that accompanies this letter.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

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.