



Llywodraeth Cymru
Welsh Government

E-mail request

Our ref: ATISN 15457

Date: 22 September 2021.

Dear

ATISN 14547

Thank you for your request which I received on 24 August 2021. You asked for the following information:

Details of the draftsman who has drafted 'The Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005'.

I can confirm that Welsh Government holds information of this description. However, after due consideration I believe it is exempt under section 40 of the Freedom of Information Act 2000. A full analysis of my response is at Annex 1.

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,



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

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 1

Requester

The details of the draftsman who has drafted 'The Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005'

Response

I have concluded the information you have requested is exempt under Section 40(2) of the Freedom of Information Act (2000) (FOIA).

Section 40(2) of 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 name of the draftsman you have requested.

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

We do not believe there is any legitimate reason why the personal data requested would need to be released. The Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005 (the 2005 Order) was drafted by the civil service, made and scrutinised by the National Assembly for Wales (as existed in 2005). In order to interpret and understand the 2005 Order, the text of that Order is all that is needed. The identity of any particular individual civil servant engaged in the preparation of the 2005 Order does not assist with the interpretation or understanding of that Order. As such it is irrelevant as to who drafted that Order. The Welsh Government cannot identify any legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?

It is entirely possible to interpret and understand the 2005 Order without the personal data which has been requested. As such, the Welsh Government is of the view that it is not necessary to disclose the personal data caught by your request.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the identity of the individual(s), there is no requirement to balance the rights and interests of that individual (or those individuals) against the rights, under FOIA, of the requester.

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.