



Llywodraeth Cymru  
Welsh Government

ATISN 15486

15 November 2021

Dear

**ATISN 15486**

Thank you for your request to the Welsh Government for information under the Freedom of Information (Fol) Act (2000) received on 27 August. Your request clarified that you were seeking copies of information that:

1. *Shows that the Welsh Government is seriously considering permitting private suppliers of tests for travellers.*

You also asked:

2. *To see all information relating to the handling of your previous request (ATISN 15377)*

With regards to this second part of your request, where this captures your personal data this is a data subject access request (DSAR) made under the General Data Protection Regulations 2018, Information released in response to a DSAR is released only to the data subject whilst information released in response to a Fol request is publically available.

**Our response:**

On Q1, Welsh Government holds this information and is releasing a letter the Minister for Health and Social Services sent to the Secretary of State outlining the assurances needed on progress (attached at **Document 1**) and a link to the written statement permitting private suppliers of tests from 21 September (attached below).

[Written Statement: Testing Requirements for International Travel \(12 September 2021\) | GOV.WALES](#)

Additionally, please find attached email communications regarding this matter at **Document 2**. Please note, some information has been redacted under Section 40 (2) of the FoI Act. A rationale for the use of this exemption is provided at **Annex 1** to this letter.

In addition to the above, please find attached a copy of minutes (**Document 3**) that demonstrate Welsh Government have seriously considered the use of private testing. Please note, some information has been redacted under Section 40 (2) of the FoI Act. A rationale for the use of this exemption is provided at **Annex 1** to this letter. Additionally, we have redacted information within the document that doesn't provide further understanding on the subject matter raised within the scope of your request.

On Q2, it is important to note that this portion of your request requires us to treat it in part as a DSAR and also a FoI request. Consequently, we are releasing two documents in relation to this aspect of your request. **Document 4** provides copies of your personal data which we hold that relates to the handling of your previous FoI request. Please note, personal information has been redacted under the Data Protection Act 2018. This document will not be published alongside this letter and the remaining information in our Disclosure Log as data released in response to a DSAR is released only to yourself.

In specific relation to the DSAR request, the personal information of someone other than the requester is protected by the Data Protection Act 2018 (DPA) and therefore has been redacted.

Personal data is defined in Section 3(2) of the DPA as:

*“Personal data” means any information relating to an identified or identifiable living individual*

We have concluded that, in this instance, the information, names and contact details of Welsh government staff amounts to the personal data of others than the person submitting the request.

This 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 Regulations (GDPR). We consider the principle being most relevant in this instance as being the first.

### **The first GDPR principle.**

This states:

*.....that personal data shall be:*

*a) processed lawfully, fairly and in a transparent manner in relation to individuals;*

We consider that the information highlighted falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle.

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v 1.4) states:

*If disclosure would not be fair, then the information is exempt from disclosure.*

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

*“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it*

*would not be fair to disclose the requested information and thus the first data protection principle would be breached. (paragraph 63).*

In this instance, we believe the data subjects have no expectation that their personal information would be made public. The members of staff whose details are withheld are grades below that of the Senior Civil service and with no public profile. Thus, we believe release of this information would be unfair and so breach the first data protection principle.

**Document 5** provides the remaining information connected to the handling of your previous request. Please note, some information has been redacted under Section 40 (2) of the Fol Act 2000. A rationale for the use of this exemption is provided at **Annex 1** 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](mailto: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 1

### **Freedom of Information Act 2000: Section 40(2)**

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 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.

We have concluded that, in this instance, the information requested contains 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 first part of your request concerns you trying to understand if we have seriously considered the use of private suppliers to provide tests to those entering the UK. I do not believe that to satisfy this legitimate interest it is required to release the personal data of officials simply going about their day to day duties.

You are also looking to understand how your previous request was handled. Again I do not believe that the release of the personal data of officials simply going about their day to day duties will add to your understanding as to how your previous request was handled.

As such I do not believe there is a legitimate interest in the release of the personal data.

## **2. Is disclosure necessary?**

.Following the above analysis, we do not believe that disclosure of the personal data is necessary.

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

As we do not believe disclosure of this personal data is necessary, there is no requirement on us to undertake a test to balance the legitimate interests against the right of individuals, as the fundamental rights and freedoms provided by the DPA are not being challenged.