



Llywodraeth Cymru
Welsh Government

Email request

Our ref: ATISN 15574
Date: 3 November 2020

Dear

ATISN 15574

Thank you for your request which I received on 6 October. You asked for:

1. An updated version of the List of Relevant Ministerial Private Interests; and
2. Details of Minister's financial instruments/stocks/shares.

I have concluded that the information you have requested under part 1 is exempt from disclosure under Section 22 of the Freedom of Information Act (2000) – information intended for future publication.

On part 2 of your request, I have concluded the information you have requested is exempt under Section 40(2) of the Freedom of Information Act (2000).

My full reasoning for applying the exemptions is given at Annex 1 and 2 of this letter.

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,
Water Lane,
Wilmslow,



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

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

Section 22 – Information Intended for Future Publication

Section 22 states that *Information is exempt information if –*

- a) The information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)*
- b) The information was already held with a view to such publication at the time the request for information was made, and*
- c) It is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph a).*

I am of the opinion that subsections (a) and (b) above are met because the information is held with a view to its publication. This information will be published on the [Welsh Government website](#).

With regards to part (c), I have given consideration as to whether it would be 'reasonable in all the circumstances' that the information should be withheld from disclosure until the proposed publication date. I am of the opinion that releasing the information at this time would cause disruption to the Welsh Government's intentions in relation to its publication arrangements. Thus I am content that the exemption is engaged.

Section 22 is a public interest exemption. This means that, in order to withhold information, I must show that the public interest in withholding is greater than the public interest in releasing it. In terms of the public interest, it is recognised that there is public interest in there being openness and transparency within Government.

The Welsh Government has committed to publishing a list of all relevant Ministerial interests in line with the requirement within the Ministerial Code. Arrangements for processing the subsequent publication are already underway, in the normal course of business. An accelerated release of the information, without it going through the necessary approvals process, might result in inaccurate, unchecked information being disclosed prematurely, misleading the public.

To that end, I do not think it is reasonable in all the circumstances or in the public interest to release this information prematurely. Rather, I believe the public interest would be best served if the information were released as scheduled on the Welsh Government website. I am satisfied therefore that the balance of the public interest falls in favour of withholding the information.

Annex 2

Section 40(2) – Personal Data

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 as well as the financial information of ministers that 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

The Welsh Government recognises there may be a legitimate interest in the financial information of Ministers being held. This information is shared in confidence with the Permanent Secretary in order to ensure that Ministers do not use their public position to further their personal financial interests. We do not believe, however, there is any legitimate reason why this personal data would need to be released to the wider world as part of a disclosure under the Freedom of Information Act.

2. Is disclosure necessary?

In this instance, because Ministers have shared information of a financial nature, which includes any investments they may have, in confidence we believe that they would have no expectation that this information would be made public. Thus, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld

under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests. Where this information is relevant to the Minister's portfolio, it will be published on the Welsh Government website.

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.