



Llywodraeth Cymru
Welsh Government

E-mail request

Our ref: ATISN 15579
Date: 3 November 2021

Dear

ATISN 15579

Thank you for your request which I received on 7 October 2021. I have provided my response against each of the questions you submitted, as follows:

1. Which minister or minister has had responsibility for the recruitment of Special Advisors since May 2011?

Responsibility for appointing Welsh Government Special Advisers rests with the First Minister.

2. Of the current group of Special Advisor, how many are Black, Asian or Minority Ethnic?
3. Since 1999, how many of the Special Advisors recruited by Welsh Government have been Black, Asian or Minority Ethnic
4. As an overall percentage and an actual number, how many Black, Asian or Minority Ethnic people have applied to be Special Advisors since 2011?

I have concluded that the information requested under question 2 – 4 is exempt from disclosure under Section 40(2) of the Freedom of Information Act (2000). Annex 1 of this letter refers.

5. I would like to see correspondence (emails, messages, letters, notes of telephone calls, meetings and briefings) regarding attempts made by Welsh Government to improve the racial diversity of Special Advisors Team, since 2016

I have concluded that it will cost more than the appropriate limit established in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to consider your request. I have set out my reasons for non-disclosure of information at Annex 2.

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,
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 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 Section 40(2) applies to the parts 2 -4 of your request and BAME information.

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 BAME information with regard to Special Advisers. However, I do not believe there is any legitimate reason why this personal data would need to be released. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

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.

3. The Balancing Test

As it has been concluded it is not necessary to disclose BAME information relating to Special Advisers, 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.

Annex 2

The appropriate limit specified for central government is £600. When calculating whether or not your request exceeds appropriate limit, I am allowed to consider the time it is likely to take to establish if we hold the information, locate the information, retrieve the information and extract it. If these tasks are estimated to take more than 24 hours of working time, the limit will have been exceeded.

You have requested information over a 6 year period. A simple search on iShare (Welsh Government's electronic records repository) using the words "SpAD" and 'created after 2016' was conducted. The search parameter was set at identifying the first 1000 documents. The 1000 document limit was reached.

At an estimate of taking 2 minutes to investigate each document to see if it contains any relevant information to your request and to then extract it would take in excess of 24 hrs for this exercise alone ($1000 * 2/60 = 33$ hours). The limit would be further exceeded:

- in considering any other documents over the initial 1000 identified; and/or
- searching iShare for any other documents that may be in scope using terms such as recruitment, BAME or racial diversity.

You may wish to refine your request by narrowing its scope by being more specific about the exact information you wish to obtain (as opposed to seeking any information that may be held in various formats that would require an extensive search).

If you do refine your request in this way, this will be treated as a new request, please be as specific and focused as possible.