



Llywodraeth Cymru
Welsh Government

28 July 2023

Dear ,

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

In your recent emails to Welsh Government, you have asked:

“I would be grateful if you could arrange to provide me with a copy of - or hyperlink to - regulations made pursuant to S.12 of the Data Protection Act 2018, under negative resolution procedure, and any published guidance” (received July 20, your reference NCC/WJ/67/NH),

and

“I would be grateful if you could arrange to provide me, from Welsh Government records, with a copy of - or hyperlink to - Regulations made under Section 9, Section 12 and Section 13 of the Freedom of Information Act 2000” (received July 23, your reference NCC/WJ/68).

It's important to note the Freedom of Information Act (FOIA) gives individuals a right of access to recorded information held by a public authority at the time the request was received. It does not require an authority such as the Welsh Government to provide advice, views or opinions where those views (etc.) are not already recorded. This is confirmed by the Information Commissioner's guidance 'The Guide to Freedom of Information', page 7:

“The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it.”

With this in mind, Welsh Government is not convinced that your above questions amount to valid requests for information under the FOIA. Nevertheless, if the information were held, it would be exempt under section 21 of the FOIA - information accessible to applicant by other means.

United Kingdom legislation is published on www.legislation.gov.uk. For avoidance of doubt, we have already cited the relevant Regulations issued under section 12(5) of the FOIA (The Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004) in our previous acknowledgment letter to you (ATISN 18736, dated July 18). These 2004 Regulations remain the relevant extant legislation and are the Regulations cited in the Information Commissioner's guidance:

https://ico.org.uk/media/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf

Accordingly, these are the Regulations that the Welsh Government will - and will continue to - apply. Any queries regarding our legitimacy in doing so should be directed to the Information Commissioner. Alternately, you may wish to seek your own legal advice regarding the interplay between the 2004 Regulations and the Data Protection Act 2018.

Any queries regarding updating the Regulations by negative resolution procedure should be directed to the relevant Ministerial department at UK government. Any 'published guidance' is, by definition, published; the FOIA does not oblige Welsh Government to take an inventory of this and provide a requester with the links. However, the Information Commissioner's website will provide a good source of any guidance on this matter. The relevant link is provided above.

Yours sincerely,