



Ref: ATISN 19366

3 January 2024

Dear ,

ATISN 19366 – Big Brother Watch

Thank you for your email received on 03 December 2023 which will be dealt with under the Freedom of Information Act (2000). You asked for the following information:

Case: CO/88/2022 - 'Big Brother Watch vs Welsh Ministers'.

On 9th November 2021, the claimant Big Brother Watch launched pre action legal proceedings against the Welsh Government re: use of the NHS Covid Pass in Wales (B/D/547)

We request the following information as judicial proceedings have long since been settled and closed between the Appellant and Defendant.

- 1. The Defendant (Welsh Ministers) 26 November 2021 pre-action response letter ('the PAPR') (B/D/568).*
- 2. The Defendant (Welsh Ministers) response letter of 7 January 2022, regarding disclosure (B/D/608).*

Our Response

I can confirm that the Welsh Government does hold the information you are requesting but I have concluded that the information requested is exempt from disclosure under the following section of the Freedom of information Act 2000:

- Section 32 (Court, inquiry or arbitration records).

An explanation of our application of this exemption is set out at the Annex 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

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

Engagement of Exemptions

When considering the release of information captured by a request, we are required to consider the potential effects of disclosure of the information to the wider World. This is because information released in response to a FoI request is released to the World, not just to the person submitting the request. As such we need to take into account how any other individual may use, or misuse, the information if it is placed into the wider public domain. So whilst the request may have a legitimate, and benign, interest in accessing the requested information, we could conclude that the risk that the information could be misused by others is more compelling and thus the information should be withheld.

This Annex sets out the information you have requested and the corresponding reasons for the engagement of section 32 (court inquiry or arbitration records) for your request for the following information.

1. *The Defendant (Welsh Ministers) 26 November 2021 pre-action response letter ('the PAPER') (B/D/568).*
2. *The Defendant (Welsh Ministers) response letter of 7 January 2022, regarding disclosure (B/D/608)*

Section 32

I have concluded that the information requested is exempt from disclosure under section 32(1)(a) of the Freedom of Information Act 2000, which states that:

32.—(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

Guidance from the Information Commissioner (ICO) about section 32 (Court, inquiry or arbitration records) explains at paragraph 59 that section 32 applies until after the relevant court, inquiry or arbitration proceedings have concluded. The guidance also points to case law which has confirmed that section 32 applies until the documents become historical records, which is defined as records over 20 years old in section 63.

The pre-action response letter and the Welsh Ministers response letter regarding disclosure was filed and placed in the custody of the court solely for the purposes of the judicial review proceedings. The letters were created specifically for the purpose of those proceedings and therefore the information in it is held only by virtue of being contained in that document.

The pre-action response letter dated 26 November 2021 and the Welsh Ministers response letter regarding disclosure dated 7 January 2022 are not considered historical records as they are under 20 years old. On this basis, we have therefore concluded that section 32(a) applies in relation to your request. Section 32 is an absolute exemption, therefore there is no requirement to carry out a public interest test.