

11 February 2025

Dear

ATISN 23211

Thank you for your request which I received on 18 December 2024. You asked for the following information:

A list of currently active Welsh Government special advisors which includes:

- Name.
- Portfolio/work area they are responsible for.
- Which minister they are responsible to.
- Work e-mail address.

Our response

I can confirm that some of the information requested is considered exempt under Section 22 (Information intended for future publication) of the Freedom of Information Act 2000 (FOIA). The reasons for exemption have been set out at Annex A.

Welsh Government publish a written statement about Special Advisers as part of an annual publication schedule. Details of Special Advisers for the previous year can be found at the following:

[Special advisers: register of interests | GOV.WALES](#)

[Written Statement: Special Adviser Annual Report 2023-24 \(3 October 2024\) | GOV.WALES](#)

In relation to the second part of your request, Special Advisers are appointed by the First Minister and work across government to provide support where necessary.

I have concluded that the final part of your request “work e-mail address” is exempt from disclosure under Section 40 (Personal information) of the FOIA. The reasons for exemption have been set out at Annex B.

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 e-mail: 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

Telephone: 0303 123 1113

Website: www.ico.org.uk

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 A

Annex A - Section 22 – Information intended for future publication

Engagement of section 22(1) (Information intended for future publication)

Whilst I can confirm that the Welsh Government holds information of this description, it is considered exempt under section 22 of the Freedom of Information Act. This states (inter alia):

1) 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 when 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 can confirm that the conditions under (a) and (b) are satisfied. Welsh Government does hold the information being requested. Details of Special Advisers for the previous year are published annually in arrears on the Welsh Government website. Details of Special Advisers for the previous year can be found at the following [Written Statement: Special Adviser Annual Report 2023-24 \(3 October 2024\) | GOV.WALES](#).

For (c), the Welsh Government believes that it is reasonable in all the circumstances that the information should be withheld from disclosure until routinely published on an annual basis. Publishing the requested information now may not reflect the information that will be published on the website due to in-year changes; it could be misleading and not present an accurate picture. For that reason, we believe it is reasonable for the publication to take place at a future date, as to ensure the accuracy and integrity of the information for the intended external audience.

Public Interest Test

Section 22 is also a public interest tested exemption. This means that in order to withhold information under it, it has to be shown that the public interest in withholding the information outweighs that in releasing it. Whilst Welsh Government acknowledges the general public interest in openness and transparency that release would engender, we believe the release of information at this stage would be confusing and may not present complete overall information compared to that which will be published.

The Welsh Government believes that the details of Special Advisers should be exempt from disclosure on the basis that more accurate and complete information will be published in due course. Publishing the requested information now may not reflect the information that will be published on the website due to changes throughout the year in staffing; it could be misleading and not present an accurate picture.

Public interest arguments in favour of disclosure

- The general presumption of openness that the FOIA aspires to;
- General interest from the Senedd, the wider public and media.

Public interest arguments in favour of withholding

- The intended publication is in the not too distant future;
- Information released through the Freedom of Information Act is released to the world and not just the requester. Details of Special Advisers are published annually, so that any changes that happen throughout the year can be reflected accurately;
- Disclosure of this information now may compromise trust in the accuracy of official information.

Balance of public interest test

On the basis of the above, we conclude that on balance the public interest arguments are in favour of withholding the details of Special Advisers at this time. The public interest in this information will be met with publication of the details of Special Advisers on an annual basis, in arrears.

Annex B

Annex B - Section 40 – Personal information

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 e-mail addresses (and other associated personal information) of Special Advisers.

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 Special Advisers. We do not believe, however, there is any legitimate reason why the personal data/contact details 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 to understand the information.

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.