

Swyddfa'r Prif Weinidog a Swyddfa'r Cabinet

Office of the First Minister and Cabinet Office



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 11776

Date: 21 December 2017

Dear _____,

Request for Information – ATISN reference 11776

Thank you for your request which was received by the Welsh Government on 29 November 2017. You asked for the following information:

Can I please request all correspondence between the Welsh Government and the Office for National Statistics relating to on and off balance sheets classification.

I have concluded that some of the information you have requested is exempt under Section 21 of the Freedom of Information Act (2000) as it has already been published:

<https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/classification/sandwelshgovernmentrelatedcapitalprojects>

Furthermore, I have concluded that some of the information you have requested is exempt under Section 35 of the Freedom of Information Act (2000). The reasons for the withholding some information is set out at Annex 1 to this letter. The information in scope of your request which is not captured by the exemption, accompanies 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: FreedomOfInformationOfficer@wales.gsi.gov.uk

Please remember to quote the ATISN reference number above.



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

CentralDepartments-FOI/DPgov.wales
Gwefan • website: www.cymru.gov.uk

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

ATISN 11776 - Consideration For and Against Disclosure of Information

Section 35 (1)(a) – Formulation of Government Policy

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under sections 35(1)(a) of the Freedom of information Act 2000.

This exemption states that:

(1) information held by a government department is exempt information if it relates to:
(a) the formulation or development of government policy.

Section 35 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it. Before I can consider the public interest test however, the Welsh Government's Code of Practice on Access to Information first obliges me to consider the 'substantial harm' test. This means that it has to be shown that substantial harm would occur to the principle the exemption is seeking to protect if the information were released.

Public Interest Test

The Office of National Statistics (ONS) independently assesses organisations and the transactions they undertake to determine how they should be treated in the UK National Accounts and related statistics. The ONS determines whether organisations are in the "public" or "private" sector. In assessing whether an organisation is public or private, a fundamental question is: "Does Government exercise significant control over the general corporate policy of the organisation?"

These assessments are undertaken by the ONS in accordance with the relevant EU legislation and associated guidelines. These assessments are made *inter alia* to establish the quantum of public debt and deficits, and do not affect the legal ownership or management structures of organisations.

I recognise that the public has an interest in the evolution of policy-making by the Government and subsequent decision-making by the ONS; and that to release information now would enhance transparency about those processes. However, disclosing detail of ongoing discussions with the ONS may inadvertently undermine dialogue, and this would not aid the timely and effective classification of organisations or the delivery of policy in Wales.

Premature disclosure of information relating to dialogue with the ONS could present an inaccurate indication of any final outcomes of ONS assessments, and may, in fact, be contrary to the public interest if it results in inaccurate or incomplete information being disseminated. In addition, premature disclosure could impact upon the Welsh Government's scope for decision-making.

I am aware that as a general rule, the sensitivity of information is likely to reduce over time so that the age of the information or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however,

the information captured is very much current information and relates to policy which is still in development.

I believe therefore that the balance of the public interest falls in favour of withholding information relating to these meetings as this information relates to policies that are still in development.