

Swyddfa'r Prif Weinidog a Swyddfa'r Cabinet

Office of the First Minister and Cabinet Office



Llywodraeth Cymru  
Welsh Government

Our ref: ATISN 11845  
Date: 26 January 2018

Dear ,

Request for Information – ATISN reference 11845

Thank you for your request which was received by the Welsh Government on 18 December 2017.

You asked for the following information:

*Any texts or emails between the First Minister's Special Advisers and BBC journalists between Thursday 14th December and 18th December; Phone records for any calls which took place between the First Minister's SpAds and BBC journalists during the same period .*

I have attached the information held in relation to this request at Doc 1.

I have withheld certain personal data under Section 40 of the Freedom of Information Act and have set out my reasons for doing so at Annex 1.

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](mailto:FreedomOfInformationOfficer@wales.gsi.gov.uk)

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:



BUDDSODDWYR | INVESTORS  
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park  
Caerdydd • Cardiff  
CF10 3NQ

CentralDepartments-FOI/DPgov.wales  
Gwefan • website: [www.cymru.gov.uk](http://www.cymru.gov.uk)

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

## Section 40 – Personal Data

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

*“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.*

I have concluded that, in this instance, the withheld information amounts to officials and third parties personal data.

Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. I consider the principle being most relevant in this instance as being the first.

The first data protection principle states:

*Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -*

*(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

I consider that the withheld information in relation to names and contact details falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.4) states:

*If disclosure would not be fair, then the information is exempt from disclosure.*

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

*“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).*

Our analysis of the ICO’s key considerations in assessing ‘fairness’, as set out in the Guidance, are presented below.

Some of the withheld information includes the names and personal contact details of officials and third parties, who would not expect their contact details to be released in this context.

There are set procedures in place for members of the public to contact the Welsh Government in relation to any matters, using generic contact mechanisms.

Having such systems in place means members of the public do not make direct contact with third parties or officials and avoids those officials dealing with potentially unnecessary and disruptive correspondence.

In this context, the civil servants and third parties were liaising with each other as part of the normal course of business. In doing so, there would be no expectation that their names or contact details would at any time be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information, and we do not see any legitimate reason why the named officials or third parties need to be contacted directly. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle.

For that reason, I believe the information should be withheld under section 40(2) of the Freedom of Information Act.

From: (Special Advisor)  
To: @bbc.co.uk  
Sent: Mon 18/12/2017 16:06  
Cc:  
Subject: AM comments on closure of

Please find attached a response to the comments.

Regards,

**A spokesperson for Ken Skates said:**

**"It is a sad reflection on Plaid Cymru that once again they fail to recognise that the cause of instability in the bus industry is due to deregulation under the Tories in the 1980s. Perhaps that's because Plaid appear to want to work with the Tories against the interests of Wales.**

**"It is also a crying shame that Plaid failed to support the £10m capital investment in Wrexham announced recently, knowing full well that public money of this kind cannot be used to prop up a struggling private company.**

**"Welsh Government officials and Business Wales representatives met D Jones and Sons in October as part of our business support programme for the bus industry. The owners made no indications the business was in any financial difficulty.**

**"We are now seeking an urgent meeting with Wrexham County Borough Council to discuss the situation and put in place measures to safeguard key local bus services previously provided by D Jones and Son in the Wrexham area.**

**"In stark contrast to what Llyr Gruffydd states, the Welsh Government has again this year protected the amount local authorities receive for local bus services, despite the challenges we continue to face due to cuts to our budget from the UK Government.**

**"The people of North Wales deserve better than Plaid Cymru exploiting people's anxieties and calling for public transport investment to be used instead to subsidise a private company. Their strange demands illustrate an unwillingness to support much needed reform of bus services and a desire instead to protect private profit over passenger interests."**

**-Ends-**

*Special Adviser / Ymgynghorydd Arbennig*



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E-mail/E-bost: [@gov.wales](mailto:@gov.wales)

*Any of the statements or comments made above should be regarded as personal and not necessarily those of the Welsh Government, any constituent part or connected body.*

*Dylai unrhyw ddatganiadau neu sylwadau uchod gael eu trin fel rhai personol ac nid o reidrwydd fel datganiadau neu sylwadau gan y Llywodraeth Cymru, unrhyw ran ohono, neu unrhyw gorff sy'n gysylltiedig ag ef.*

**From:** @bbc.co.uk  
**Sent:** 15 December 2017 10:50  
**To:** (Special Adviser) <mailto:Huw.Price@gov.wales>  
**Subject:** Rebecca Evans - Sunday Supplement  
**Importance:** High

Hi , here from Radio Wales Sunday Supplement prog.

I'm just following up on your conversation earlier in the week with .

Could I please get a mobile number for Rebecca, in case of any emergency.

Also can we check that Rebecca knows where the studio in Carmarthen is - we can give directions if not.

And finally, we now have the press release, so no need to send that.

Thanks

.

/ BBC Radio Wales



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/ @BBCRadioWales

## **Text messages**

Received by Special Adviser 14:56 on 14/12/17

Hi, Carmarthen all ones for Rebecca. Can she be there for 0800? Could I also get her mobile as an SOS. Is the meet and greet on Sunday. When will we get the embargoed release? Thanks again.

Received by Special Adviser 14:25 on 15/12/17

Hi! Thanks for making time with the FM for us today!