



Llywodraeth Cymru  
Welsh Government

31 January 2018

Dear \_\_\_\_\_,

**Complaint in respect of Request for Information – reference ATISN 11784**

Further to your e-mail of 2 January, please accept my apologies that the information requested was not provided. The original request was interpreted as seeking a description of the process to appoint an investigator. To that end, I have partially upheld your complaint. I have now identified certain recorded information that is captured by your request and have attached this at Doc 1, along with links to the publicly available information.

However, I have decided that certain aspects of this information should be withheld under Section 40(2) of the Freedom of Information Act (2000) as it amounts to personal data. My reasons for withholding this information are included at Annex 1 to this letter.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545 745  
Fax: 01625 524 510  
Email: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
Bridgend  
CF35 5LJ

Telephone: 0845 6010987 (local rate)  
Email: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk)

Yours Sincerely,

Peter Greening  
Head of Cabinet Division

## 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 the personal data of officials and third parties.

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 inquiry 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.

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:** @gov.scot  
**Sent:** 23 November 2017 13:45  
**To:** (OFMCO - Cabinet Division)  
**Cc:** @gov.scot  
**Subject:** RE: Contact details

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Here are the contact details for the two Independent Advisers on the Scottish Ministerial Code (by all means feel free to mention that the contact details were supplied to you by the Permanent Secretary's office in Edinburgh):

James Hamilton QC

I hope this is helpful.

| Cabinet Secretariat | Scottish Government | T | M | , St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG

**From:** @gov.wales  
**Sent:** 23 November 2017 13:02  
**To:** @gov.scot  
**Subject:** RE: Contact details

Much appreciated .

Office of the First Minister and Cabinet Office/Swyddfa'r Prif Weinidog a  
Swyddfa'r Cabinet  
Welsh Government/Llywodraeth Cymru

**From:** @gov.scot  
**Sent:** 23 November 2017 13:01  
**To:** (OFMCO - Cabinet Division); [@gov.scot](#)  
**Subject:** RE: Contact details

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I'm sending this to correct e-mail (he is with a 'y').

We're looking out the contact details and will come back to you very shortly.

Best wishes,

| Cabinet Secretariat | Scottish Government | T | M | , St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG

**From:** @gov.wales  
**Sent:** 23 November 2017 12:59  
**To:** @gov.scot  
**Cc:** @gov.scot  
**Subject:** Contact details

: Many thanks for the discussion earlier. I would be grateful for the contact details for James Hamilton and.

Regards

Office of the First Minister and Cabinet Office/Swyddfa'r Prif Weinidog a  
Swyddfa'r Cabinet  
Welsh Government/Llywodraeth Cymru

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Wrth adael Llywodraeth Cymru sganwyd y neges yma am bob feirws. Mae'n bosibl y bydd gohebiaeth gyda Llywodraeth Cymru yn cael ei logio, ei monitro ac/neu ei chofnodi yn awtomatig am resymau cyfreithiol. Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. Communications with Welsh Government may be automatically logged, monitored and/or recorded for legal purposes. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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**From:** (OFMCO - Governance & Performance)  
**Sent:** 23 November 2017 15:34  
**To:**  
**Cc:** PS Permanent Secretary; (OFMCO - Cabinet Division)  
**Subject:** Independent Adviser under the Ministerial Code

Dear Mr Hamilton.

Thank you for our very helpful conversation a little earlier. I have made the First Minister aware of the other demands on your time in the next few weeks and he has confirmed that he would be very grateful if you would agree to undertake this role for us, as we discussed. Here is the draft statement which we would like to put out this afternoon:

***Written Statement appended below***

Can you let me know if you are content please? We can discuss the practicalities to a slower time scale of course. As we agreed, if you receive any press queries direct then please refer them to the Welsh Government press office.



**Written Statement from the First Minister announcing an amendment to the Ministerial Code and referral to James Hamilton:**

**<http://gov.wales/about/cabinet/cabinetstatements/2017/indadvmincode/?lang=en>**

**Written Statement - Independent Adviser on the Ministerial Code**

Thursday 23 November 2017

**Carwyn Jones, First Minister**

The Ministerial Code sets out the First Minister's expectations for standards of Ministerial behaviour and personal conduct - the Code also applies to the First Minister. Until now this has meant that there was no opportunity for independent assessment of significant concerns raised in relation to the First Minister's adherence to the Ministerial Code apart from the Assembly's own scrutiny and standards arrangements and the normal electoral process.

I have listened to those who have called for an independent referral process to be available in circumstances where it is felt the First Minister requires a source of external and independent advice.

As such, the Ministerial Code has been amended to allow for such referrals to be made to an Independent Adviser where he deems it necessary. Section 1.4 of the Code now provides that the First Minister may ask an Independent Adviser to provide him with advice on which to base his judgement about any action required in respect of Ministerial conduct and that the Adviser's findings will be published.

The Code does not prescribe the scope, format or conduct of any inquiry the Adviser may be asked to undertake. It is for the Adviser to determine how to act upon matters referred by the First Minister

Over the coming weeks, a panel of several suitably qualified and experienced Advisers will be appointed to undertake this work individually or collectively.

I have agreed with James Hamilton, a current Independent Adviser to the Scottish Government, to accept an immediate referral from me in relation to allegations made in the last two weeks that I breached the Ministerial Code.

**Terms of reference for the inquiry:**

**<http://gov.wales/newsroom/firstminister/2017/171215-update-on-independent-adviser-on-the-ministerial-code/?lang=en>**

**Update on independent adviser on the ministerial code**

Friday 15 December 2017

A spokesperson for the Permanent Secretary said:

“On November 23rd, the First Minister referred himself for advice under the Ministerial Code in relation to answers given to Assembly Members in 2014 and 2017. James Hamilton, who is an independent adviser to the Scottish Government on Ministerial Code issues, agreed to carry this out, and has already commenced his work.

“The terms of reference set by the First Minister to Mr Hamilton are for him to provide advice on: the allegation that I breached the Ministerial Code in relation to answers I gave to questions on 11th November 2014 and 14th November 2017.

“The Ministerial Code does not prescribe the scope, format, or conduct of the process, and it is for Mr Hamilton to determine how to act on the matter which has been referred. A secretariat has been made available to Mr Hamilton, with appropriate safeguards to ensure due separation from the First Minister’s office and the rest of the Welsh Government in relation to this process and any material submitted.

“Anyone wishing to contact Mr Hamilton’s secretariat with material relevant to the terms of reference can do so via [referralinvestigation@wales-uk.com](mailto:referralinvestigation@wales-uk.com). Material related to the process will be stored independently of other Welsh Government internal systems.

“Mr Hamilton’s findings will be made public following the conclusion of his work.”