

Swyddfa'r Prif Weinidog a Swyddfa'r Cabinet

Office of the First Minister and Cabinet Office



Llywodraeth Cymru
Welsh Government

Email request

Our ref: ATISN 11918

Date: 4 April 2018

Dear

Request for Information – ATISN reference 11918

Thank you for your request which I received on 18 January 2018 about a previous Welsh Government cabinet reshuffle.

I have decided that the information you have requested is exempt from disclosure under sections 36 and 40 of the Freedom of Information Act 2000 and is therefore withheld. The reasons for applying these exemptions are set out in the annex to 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 e-mail: 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:

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

Section 36 – the effective conduct of public affairs

The scope of the section 36 exemption is potentially wide ranging and, in order to safeguard against possible abuse of its use by a public authority, the Freedom of Information Act introduces a two-stage process when its use is being considered.

Stage 1 is to ascertain whether the basic conditions for triggering the application of the exemption apply. This is the role of the ‘qualified person’ and section 36 of the Act states that in relation to the Welsh Government the qualified person means the Welsh Ministers or the Counsel General. If, after considering the information, the qualified person forms the reasonable opinion that the specified adverse effects will not (or will not be likely to) arise from disclosure then the information cannot be withheld under section 36.

If the qualified person decides that the information would, or would be likely to, have the specified adverse effects(s), then Stage 2 can commence.

In this case, following consideration, the qualified person has agreed that the following limbs of section 36 are engaged:

- Section 36(2)(b)(i) – the free and frank provision of advice
- Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs.

Cabinet reshuffles are a matter for the First Minister. To release information in relation to a particular reshuffle could potentially undermine the workings of the current cabinet and impact on the delivery of future reshuffles.

Section 36 is also a qualified exemption, subject to the public interest test.

Again the Welsh Government acknowledges the general public interest in openness and transparency that release would engender. However, given the sensitivity surrounding this request, I consider there to be a strong public interest in withholding the information at this time.

Section 40 – personal information

Section 40 of the Freedom of Information Act 2000 sets out an exemption from disclosure where 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 information requested contains third party personal data. Under section 40(2) of the Freedom of Information Act, personal data is exempt from release if disclosure would breach one of the data protection principles.