



Llywodraeth Cymru  
Welsh Government

2 May 2018

Dear ,

**ATISN 12228**

Thank you for your requests which I received on 10 and 22 April. You asked for information relating to:

- The official invoice or paperwork relating to the work undertaken to produce the review on the Animal Welfare (Electronic Collars) (Wales) Regulations 2010.

The information you requested is enclosed. We have decided that some of the information is exempt from disclosure under Sections 31(1) (a) “prevention of crime” and Section 40(2) “Personal Information” of the Freedom of Information Act

*Section 31 Law enforcement.*

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice —*

*(a) the prevention or detection of crime*

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.

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.

When considering the disclosure of information in response to a FoI request we need to take into consideration the effects of making the requested information freely available to everybody as disclosures, in response to requests, are made to the world at large and not just to the requester. Consequentially, whilst a requester may have a legitimate interest in being provided with the information and may have no intention of misusing that information, little, if any, weight can be given to the requesters intentions. Rather it is the likely uses that any unknown person may put the released information to that is given greater weight.

In this case the information being withheld is the Welsh Government staff details and account number for a trading business. Withholding this information prevents criminal parties accessing the businesses accounts to remove money, or to commit fraud.

### **Public Interest Test**

In order to satisfy the public interest test in relation to the exemptions, it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to outweigh the public interest arguments in favour of release despite the prejudice that would or would be likely to arise.

### **Public interest arguments in favour of disclosure**

Animal welfare decisions, such as the use of electronic collars, generate strong views both for and against. There is, consequentially, a strong public interest in making public how and why such decisions are reached.

Whilst there is a general public interest in the public being able to scrutinise how the Welsh Government awards contracts and what the Welsh Government gets from those contracts, including value for money.

### **Public Interest arguments in favour of withholding**

The bank account number and Welsh Government staff details would not provide any value to the public understanding of either the decision making around the use of electronic collars or the value of the contract for the external, independent, review on their effects and use that was part of the information considered during the decision making process.

There is, however, a very strong public interest in the Welsh Government ensuring that businesses, or individuals, are not put at greater risk of becoming the victims of crime.

### **Balance of public interest test**

On balance I believe that the public interest lies in favour of withholding the information due to the need to ensure that account details and staff details are not released to the public.

Section 40 Personal information.

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.

We have concluded that, in this instance, the information requested contains third party 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. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This 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.

We consider that some parts of these reports clearly falls within the description of personal data as defined by the DPA and that its disclosure of these parts 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 1.3) states (at p11):

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.

- 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.

The withheld information amounts to the personal data of members of staff. In this context, they would have no expectation that their personal data would be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public having access to this information. Because of this, it is my view that the release of such 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. This is an absolute exemption and not subject to the public interest tests.

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:

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