

Swyddfa'r Prif Weinidog a Swyddfa'r Cabinet

Office of the First Minister and Cabinet Office



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 11910

Date: 1 June 2018

Dear ,

Request for Information – ATISN reference 11910
Complaint in respect of your request about credit card payments

Thank you for your request which was received by the Welsh Government on 1 May 2018.

I have considered your complaint in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request or via the internet.

You asked for an internal review of the Welsh Government's response to your Freedom of Information request you submitted on 16 January 2018.

In regard to the first two elements of your original request, you state that the Welsh Government had neither provided the information nor applied an exemption.

A summary of the amounts was provided to you in relation to the first two elements of the request, but data was redacted on the grounds of data protection. However, I have concluded the Welsh Government's response to you should have provided a much more detailed explanation as to how the Section 40(2) (Personal Information) exemption of the Freedom of Information Act was considered and engaged in response to the two specific requests.

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 information requested contains third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would



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breach one of the data protection principles. I consider the principle being most relevant in this instance as being 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.

I consider that the itemised lists you requested clearly falls within the description of personal data as defined by the Data Protection Act (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 1.3) states (at page 11):

- *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).

In this instance, because the transactions relate to Staff Welfare, Agency Staff and Health & Safety expenditure, I believe the employees involved would have no expectation of this information being made public. Thus, I believe the release of this information would be unfair and so breach the first data protection principle. For this reason, it is reasonable to withhold the information under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

We apologise that this level of information was not provided as part of the Welsh Government's response to your request on 13 February 2018.

In regard to the third part of your original request and the reframing of this request, I have concluded that further clarification is required in order to address your request. Therefore, to enable the Welsh Government to respond to your request satisfactorily, I should be grateful if you would provide further specific details in regard to the information sought.

Turning to your fourth and final point, I have reviewed the process and the time taken to respond to your request in regard to obtaining a copy of the internal audit report.

Firstly, I accept that a more detailed explanation should have been provided in the Welsh Government's letter to you, dated 13 February 2018, fully setting out the reasons as to why there would be a delay in responding to your fourth question of the original request.

Officials had reach the conclusion that they should seek the agreement of the "qualified person" that exemptions under Section 36 are engaged, at the time of writing to you on 13 February 2018.

I have also concluded that the Welsh Government's response to you on question 4, in the letter dated 29 March 2018, provided adequate information to explain why the Section 36 exemption had been engaged in relation to this specific request. However, I recognise the length of time taken to provide a response was excessive.

My review established a number of factors which contributed to the delay in providing a response more promptly. Firstly, the teams dealing with the administrative side were experiencing above average levels of FOI requests during this period and this was shortly after a period of unprecedented numbers of enquiries following a Cabinet reshuffle towards the end the previous calendar year. These events placed significant pressures on resource levels.

Secondly, the officer tasked with providing the response to this part of your request had also just been appointed as the Data Protection Officer for the Welsh Government and consequently, a significant amount of her time was being taken up with preparations for the implementation of the new General Data Protection Regulations (GDPR). The officer was also expected to fulfil her duties and obligations in her role as the Head of Internal Audit.

Finally, the role of "qualified person" for Section 36 exemptions had only recently transferred to the Counsel General from the First Minister. This process was not fully familiar to the Counsel General at this time and, therefore, the procedure took longer than it had done previously when the First Minister was the "qualified person".

I have therefore recommended that teams involved in handling FOI requests review and revise their processes in order to avoid such delays in the future and ensure timelines are adhered to.

If you remain dissatisfied with this response you 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,
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SK9 5AF.

Tel: 01625 545 745.

Fax: 01625 524 510.

Email: casework@ico.gsi.gov.uk

Yours sincerely

Steve Lewis
Head of Branch