



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: ATISN 12669

1 November 2018

Dear

ATISN 12669 – Correspondence with Office for Students

Thank you for your request which the Welsh Government received on 3 October about correspondence sent in 2018 between the Cabinet Secretary for Education and the Office for Students.

A copy of the information captured by your request and which I am releasing is enclosed.

I have decided that some of the information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 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 Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

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.

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

Higher Education Division

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We have decided to withhold the following information:

Information being withheld	Section number and exemption name
We have redacted the names of officials from the correspondence we are disclosing under section 40 of the Freedom of Information Act.	Section 40(2): Personal Information

Section 40(2) of the Freedom of Information Act (FOIA) sets out an exemption from the right to know if the information requested is personal information of someone other than the requester and is protected by the Data Protection Act 2018 (DPA).

Personal data is defined in Section 3(2) of the DPA as:

“Personal data” means any information relating to an identified or identifiable living individual

We have concluded that, in this instance, the names of junior officials amounts to the personal data of others than the person submitting the request.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the General Data Protection Regulations (GDPR). We consider the principle being most relevant in this instance as being the first.

The first GPDR principle.

This states:

.....that personal data shall be:

a) processed lawfully, fairly and in a transparent manner in relation to individuals;

We consider that the information highlighted falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle.

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. (paragraph 63).

In this instance, we believe the data subjects have no expectation that their personal information would be made public. Those junior members of staff who were simply going about their daily business would have had no expectation that their personal information would be made public.

As a result, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.