Our ref: ATISN 13622  
Date: 27 December 2019

Dear,

Request for Information – ATISN 13622

Thank you for your request which I received on 27 November. You asked the following information regarding the complaint into the failure of Welsh Government staff to adhere to Nolan Principles (ref: CU-03903):

- All correspondence from and to you regarding this issue. To include anything you have looked at to investigate this complaint; and
- A log of phone calls and any notes relating to the above.

In my letter to you dated 4 December, I confirmed I interpreted “all correspondence from and to you regarding this issue” as all correspondence from and to myself: Darina Davies, regarding your complaint which was passed to the Complaints Advice Team, and acknowledged to you, on 11 October 2019.

I have provided you with correspondence addressed to and from me from the date of complaint registration to the time of your FOI request. Please see accompanying documents. Please note, that within the documents, some of the information has been redacted under Section 40(2) of the Freedom of Information Act (2000) – annex 1 to this letter provides further information on the application of this exemption.

In relation to the first part of your request “to include anything you have looked at to investigate this complaint” an initial search of our electronic records has identified 938 items of correspondence, which may not all be relevant to your request. Section 12 of the Freedom of Information Act allows a public authority to refuse a request if it calculates that dealing with it would exceed the appropriate limit. The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it.

For the purposes of calculating the appropriate limit, I have assessed that the combined total time to locate, extract and retrieve the information requested would be over 78 hours. This is based on a calculation of 5 minutes to review each of the records identified from our initial search to determine what information therein would be caught by your request (5 minutes x 938 items divided by 60 minutes = 78 hours).
Should you be able to refine your request to be more specific on the exact information you are seeking, I may be able to further assist. Any redefined request will be treated as a new request for information.

With regard to the remaining parts of your request, I have concluded that I cannot provide you with:

- Copies of any handwritten notes. These are destroyed as part of our data protection rules.
- A log of phone calls. We do not hold this information. I can however advise you that I spoke with a number of Welsh Government Officials.
- A log of notes. There is no information held for this request.

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: Freedom.ofinformation@gov.wales  

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 1

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (FOIA), together with the conditions in section 40(3)(a)(i) or 40(3)(b), provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 1998 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that with exception of the information in which I am named, in this instance, the remaining information contained within the correspondence provided to you and caught by your request contains the names of other Welsh Government staff, their e-mail addresses and direct telephone numbers.

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 GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. The Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate Interest Test

The Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication in order to follow the flow of that communication. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand those communications. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?
The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. It is straightforward, even when withholding the personal data, to follow the flow and context of the information. As such we do not believe it is necessary to disclose the personal data to understand the information. Nor do we believe it is necessary to disclose the personal data in order to allow members of the public to contribute to this, or future discussions on this or any other matter. There are mechanisms by which the public can contact Welsh Government such as generic mailboxes and generic telephone numbers.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the identity of the individuals within the information disclosed, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.