



Llywodraeth Cymru
Welsh Government

ATISN 13901

5 June 2020

Dear ,

ATISN 13901 - COVID 19 testing (Roche)

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 5 April. You requested the following:

Following the reports last Saturday 28 March about the collapse of a written agreement with the COVID-19 test supplier (the First Minister confirmed that Roche is the company) which would have significantly increased testing capacity for the virus in Wales, I would like to request the following:

- *A copy of the written agreement with Roche to provide the tests and/or any other existing document documenting Roche's commitment to provide COVID-19 testing for Wales*
- *A copy of any internal records or correspondence relating to this matter*
- *A copy of all correspondence between the Welsh government (including its ministers or officials acting on behalf of the government) with*
 - *Roche;*
 - *PHW,*
 - *Public health England,*
 - *the British Government (including any minister, body or officer acting on behalf of the Government) concerned with this matter*

Please accept our apologies for the delay in responding.

There was no contract between Welsh Government and Roche Diagnostic Ltd to provide testing. Welsh Government does hold some correspondence that falls into scope of your request but is withheld under the following FOIA exemptions:

- Section 28(1) sets out an exemption from the right to know, if the disclosure of the information in question would, or would be likely to prejudice relations between two or more United Kingdom administrations.
- Section 35(1)(a) of the FOIA covers any information relating to the formulation and development of government policy.

- Section 43(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

We have concluded that, in this instance, information related to this request, is held for the purpose of formulation and development of government policy and disclosure of the information in question would, or would be likely to prejudice relations with the UK Government and is therefore exempt under Section 28(1), Section 35(1)(a) and Section 43(2) of the FOIA at this time. For further information, see annex.

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
Email: 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.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <https://gov.wales/about/open-government/freedom-of-information/responses/?lang=en>).

Yours sincerely,

Engagement of Exemptions

When considering the release of information captured by a request we are required to consider the potential effects of disclosure of the information to the wider World. This is because information released in response to a FoI request is released to the World, not just to the person submitting the request. As such we need to take into account how any other individual may use, or misuse, the information if it is placed into the wider public domain. So whilst the request may have a legitimate, and benign, interest in accessing the requested information, we could conclude that the risk that the information could be misused by others is more compelling and thus the information should be withheld.

Section 43(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Section 35(1)(a) covers any information relating to the formulation and development of government policy.

Section 28(1) sets out an exemption from the right to know, if the disclosure of the information in question would, or would be likely to prejudice relations between two or more United Kingdom administrations.

Officials have carefully considered all of the information captured by this request and consider that the information in question should be exempt under Section 43(2), Section 35(1)(a) and section 28 (1) of the freedom of information act.

Section 43(2), Section 35(1)(a) and Section 28 (1) is a public interest exemption. This means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

Public interest arguments in favour of release

The Covid-19 pandemic is the greatest public health threat to the World in a hundred years and has resulted in major changes to everybody's lifestyle as governments around the World try to control the outbreak and keep their citizens safe and healthy. We recognise that there is a very strong public interest in the public understanding the decisions and actions taken by the Welsh Government to protect the people of Wales. Testing is seen as a key tool in the understanding and management of the virus. Consequentially there is a very strong public interest in the understanding of the testing regime employed in Wales, particularly where this differs from that undertaken by other governments.

The Welsh Government therefore, has endeavoured to ensure we are as transparent as possible, in particular through the media, publication of documents, Ministerial Written Statements and public statements in the Senedd along with ministerial press conferences and interviews. We recognise that transparency and openness in the Welsh Government's policy-making process improves public trust, leading to greater compliance with the measures introduced to bring the outbreak under control and thus reducing the overall impact of the virus on the people of Wales.

Public interest arguments in favour of withholding

Section 43 (2)

The information being withheld contains sensitive information which could have a detrimental effect on a number of agencies as well as Roche Diagnostic Ltd, if made open to the public.

At the time of the requests, there was no contract between Welsh Government and Roche Diagnostic Ltd to provide testing, however, Roche Diagnostics Ltd does have some commercial arrangement with UK Government and its agencies. These relationships and the links that Welsh Government has with them are sensitive, of which we are mindful would be exposed in the information related to this request.

Welsh Government and Public Health Wales are in discussions with Roche Diagnostics Ltd and in the process of commercial engagement to assist with the development of testing arrangements for Wales. Therefore, by releasing information related to this request may cause potential harm to our existing relationships with Roche and other organisations included in that correspondence exchanges. Future engagement with Roche could be impacted, putting their standing and future commercial interests in jeopardy.

Section 35 (1)(a)

In relation to the formulation of policy, there is a counter argument in favour of the Welsh Government being able to consider all options in a balanced way.

The policies dealing with the management of the Covid-19 pandemic are constantly under review as the scientific and medical community learn more about this particular virus over time.

We consider that it is important for Ministers and Welsh Government officials to be able to have a safe space to undertake discussions with 3rd parties freely and be able to formulate proposals with regard to the testing for Covid-19 and future polices and plans as a result. This is a fast paced environment and changes almost daily. Disclosure of any early discussions etc. will not provide the clarity that the public require and could prejudice the formulation of future government policy going forward.

PHE and PHW lead discussions on all public health matters consulting with Ministers and Welsh Government officials. It is important, that such plans and proposals are worked through before being made public.

We recognise that there is public interest in understanding discussions that take place with regards to testing for Covid-19 but believe that it is within the publics' interest to withhold the information related to this request in order to provide the government with a safe space to consider and form policy and plans to protect the continued supply of testing and its arrangements.

Section 28 (1)

There is a public interest in ensuring a close and effective working relationship between the Welsh Government and the UK Government. Good relations and engagement are essential at this time as we seek to work with, and influence the UK Government and its agencies to ensure that the interests of Wales are protected in their discussions. We believe at this point in time that should we disclose this information, our day to day working relationship with the UK Government and other agencies would be significantly prejudiced. As would be expected, information flows between administrations as we look to manage, control and overcome the current Covid-19 pandemic. Whilst much of that information is freely available there does remain some information which is sensitive or needs to be shared with a restrictive audience.

Discussions with the UK Government about arrangements relating to Covid-19 and strategies for testing are continuing and constantly updated. As agreement in this area

have not been concluded and negotiations are ongoing, it is our view that the disclosure of information related to this request could effect the relationships and have a prejudicial impact on and undermine our position.

Conclusion

We believe that the wider public interest favours maintaining the good working relationship with the UK Government and its agencies and that disclosure would likely to negatively impact discussion with the potential to undermine decisions making process here in Wales.

Whilst recognising that there are public interest arguments for disclosure of the requested information related to this request, we conclude that the public interest in withholding the information outweighs that in releasing it in this instance.