

Ein Cyf/ Our ref ATISN 14002

22 June 2020

Dear,

**ATISN 14002 - Correspondence between Welsh Government & Older People's Commissioner**

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 19 May. You asked for –

*All correspondence between the Welsh Government and the Older People's Commissioner for Wales / the office of the Older People's Commissioner for Wales between 6th May and 21st May*

Welsh Government holds this information and is attached at **Doc 1, 2, 3 and 4**.

Please note, in relation to **Doc 1, 2, 3 and 4** we have redacted personal information under Section 40 of the Freedom of Information Act 2000. For further information please see attached at **Annex 1**.

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](mailto: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

### Freedom of Information Act 2000: Section 40(2)

Section 40(2) 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, in this instance, the information requested contains third party personal data.

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:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.
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Our consideration of these tests is set out below:

#### 1. Legitimate interests

Your request indicates you are interested in obtaining copies of correspondence between the Welsh Government and the Older People's Commissioner for Wales / the office of the Older People's Commissioner for Wales between 6th May and 21st May.

We have concluded that, in this instance, some information included within **Doc 1, 2, 3 and 4** amounts to the personal data of others than the person submitting the request.

We consider that the information highlighted falls within the description of personal data as defined by the Data Protection Act and that its disclosure would breach this first 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).*

Consequently, officials of the Welsh Government affected would have had a reasonable expectation that their personal data would not be put in the public domain so as to breach this principle. As a result this information has been withheld from disclosure under Section 40(2) of the FOIA.

## **2. Is disclosure necessary?**

Following the above analysis, we do not believe that disclosure of the personal data is necessary.

## **3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

As we do not believe disclosure of this personal data is necessary, there is no requirement on us to undertake a test to balance the legitimate interests against the right of individuals, as the fundamental rights and freedoms provided by the DPA are not being challenged.