



Llywodraeth Cymru
Welsh Government

ATISN 14180

4 September 2020

Dear,

ATISN 14180 – International Travel Regulations

Thank you for your request which I received on 26 July. Following the First Minister's written statement on 9th July regarding 'International Travel Regulations, I have interpreted your request as follows:

- 1. Copies of the documents supplied by the UK Government that formed the methodology referred to by the First Minister and that was subsequently reviewed by the Chief Medical Officer of Wales.*
- 2. Copies of the review findings made by the Chief Medical Officer to the methodology that was share between the First Minister and the Chief Medical Officer specifically.*

We wrote to you on 26 August to inform you that our consideration of the public interest tests against the section 35(1)(a) "formulation of government policy" exemption was taking longer that we would have liked and that we expected to respond by 04 September. You responded to that on 26 August asking for an internal review as you did not believe that the s35(1)(a) exemption was engaged. I have, as a result, looked again at whether this exemption is engaged and I have concluded that the original decision that the s35(1)(a) exemption was engaged was correct. The annex sets out why we believe the exemption is engaged and our subsequent consideration of the public interest tests. Consequentially I do not uphold your complaint.

Ministerial decisions to add and remove exempted countries and territories from the need to self-isolate upon arrival in the UK have been based on the overall assessment of risk to public health, based on a range of factors.

This range of factors includes:

- an estimate of the proportion of the population that is currently infectious in each country
- weekly population-adjusted case incidence rate
- trends in incidence, deaths and hospitalisations
- imported infections identified through UK contact tracing
- transmission status and international epidemic intelligence
- information on a country's testing capacity, testing regime and test positivity rate
- an assessment of the quality of the data available and public health systems
- extent and effectiveness of measures being deployed by a country
- volume of passengers coming into the UK from that country
- population size of the country

Public health is a devolved matter in the United Kingdom, so Ministers in Scotland, Wales and Northern Ireland may take their own approach if they so wish.

The Welsh Ministers Chief Medical Officer and policy officials' continually monitor and review these findings.

We are withholding documents relating to your request under the following FOIA exemption and our consideration of the identified exemptions is set out in the accompanying annex:

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

We have concluded that, in this instance, the documents related to this request, is held for the purpose of formulation and development of government policy and is therefore exempt under Section 35(1) of the FOIA at this time.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745

Fax: 01625 524 510

Email: to casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae

Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours sincerely,

Annex 1

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 35(1)(a)

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

This exemption is only engaged by information being used in the formulation of government policy. Once that policy is finalised, the exemption is unlikely to be engaged. In most cases it is usually straight forward to identify when the formulation stage is concluded by the publishing of the policy document, or legislation has been made. It is, however, recognised, that where existing policy is under review, the s35(1)(a) exemption can apply to the information informing that review.

The Information Commissioner's Guidance on the application of the s35 exemptions states in paragraph 48:

For complicated policies, it is possible that formulation may continue even after this point. In some cases the government announces a high-level policy, or passes a 'framework' bill into law, but leaves the finer details of a policy still to be worked out. The high-level policy objective has been finalised, but detailed policy options are still being assessed and debated. Later information relating to the formulation of the detailed policy will still engage the exemption.

The information requested is information generated to inform the formulation of policies with regards to international travel during this current Covid-19 pandemic.

As with most of the policies and legislation relating to the Covid-19 pandemic, the International Travel Regulations are under constant review and are revised regularly as circumstances change around the World and as the scientific and medical community learn more about this particular virus. As this is very much a "live" issue, I am of the view that the s35(1)(a) exemption is engaged by the information captured by this request

Public interest arguments in favour of release

There is a very strong public interest in the public understanding the ongoing development of our policies to manage and control the current Covid-19 pandemic and the information underpinning those policies, particularly as there is much conflicting and sometimes completely wrong information being circulated on social media, etc. We also recognise the general public interest in making this information available for the sake of greater transparency and openness.

Public interest arguments in favour of withholding

The Welsh Government has endeavoured to ensure they 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.

We consider that it is important for ministers and officials from all devolved administrations to be able to have a safe space to undertake discussions.

We take the view that the section 35 exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options.

Both UK Government, devolved administrations and other agencies need to be able to discuss recommendations and formulate new proposals with regards to dealing with the control of Covid-19 as well as considering future policies and plans as a result. At present, this is a fast paced environment and changes almost daily.

Civil servants and subject experts need to be able to engage in the free and frank discussion of all the policy options internally, to expose their merits and demerits and their possible implications as appropriate. Their candour in doing so will be affected by their assessment of whether the content of such discussion will be disclosed in the near future. Premature disclosure of information protected under section 35 could prejudice good working relationships, the neutrality of civil servants.

Also, disclosure of the documents relating to the methodology used in formulating a Welsh Government response is considered as being a qualitative assessment exchanged between ministries of government for the purpose of the formulation and development of policy report. Therefore, carries the risk that the content might be misinterpreted and as such disclosure would not provide the clarity that the public require.

In conclusion it is within the wider public's 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 manage the current pandemic.