



Llywodraeth Cymru
Welsh Government

27 August 2020

Dear

ATISN 14198 - Correspondence between Ministers about an NRW employee

Thank you for your request which I received on 30 July asking for correspondence relating to a Natural Resources Wales' (NRW) employee and that employee's alleged anti-Semitic social media posts, since 20 April 2020 between:

- The First Minister and the Minister for Environment, Energy and Rural Affairs;
- The Minister for Environment, Energy and Rural Affairs and NRW;
- The First Minister and NRW; and
- Welsh Government departments and NRW.

I have decided that the information we hold is exempt from disclosure either under Section 21 or Section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions is because it is information either available publically or is personal data protected by the General Data Protection Regulation and Data Protection Act 2018. The exceptions are set out in full in the annex to this letter.

You also requested information about when NRW was notified of the Welsh Government's adoption of the International Holocaust Remembrance Alliance's working definition of anti-Semitism. I can confirm we do not hold this information.

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.



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

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The Welsh Government has decided to withhold the following information:

Information being withheld	Section number and exemption name
Screenshots of Tweets made by a third party and of the news article.	Section 21 of the Freedom of Information Act. Information reasonably accessible to the applicant by other means.
Third party personal data contained within correspondence letter between NRW and the Minister for Environment, Energy and Rural Affairs..	Section 40(2) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.

This Annex sets out the reasons for the use of Section 21 and Section 40(2) of the Freedom of Information Act (FOIA).

Section 21 – information publically accessible

The data we hold includes screenshots of Tweets and the news article. We believe you already have access to this information as it is in the public domain.

Section 40(2) – Personal Information

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 2018 (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, by reference to an identifier such as a name, an identification number, location data, an online identifier or 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 General Data Protection Regulation (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.

Our consideration of these tests is set out below:

1. Legitimate interests

We are aware you issued a local news article on this issue in April 2020 and will understandably be interested in the outcome of the investigation. We do not consider this a legitimate reason to disclose this personal information.

2. Is disclosure necessary?

The issue of anti-Semitism in public life is of wider public interest. This information is already in the public domain, via the individual’s social media and the newspaper article and so could be considered necessary to disclose.

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

We consider the release of this information will widen the general public’s awareness of the allegations against this individual. Such a release therefore has the potential to cause harm to the subject and/or their family.

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.