



Llywodraeth Cymru
Welsh Government

9 December 2020

Dear

ATISN 14474 Closing of places of worship during the firebreak

Information requested

Thank you for your request which I received on 24 October. You asked for a copy of all records relating to the decision to close places of worship during the fire break period that commenced on 23 October 2020.

Our response

I have concluded that some of the information you requested is reasonably accessible by other means. The advice received by Welsh Ministers from the Technical Advisory Cell (TAC) can be found [here](#). The Welsh Government has published impact assessments - including the evidence of socio-economic and equality impacts considered by Welsh Ministers [here](#) and advice from the SAGE advisory group on Non Pharmaceutical Interventions can be found [here](#).

The minutes of the Cabinet Meetings over the weekend of 17 and 18 October are exempt under section Section 22 of the Freedom of Information Act, Information Intended for Future Publications. It is the normal practice for Welsh Government Cabinet papers to be published six weeks after the meeting. Papers for Cabinet meetings can be found [here](#).

I have decided that some of the information relating to the decision to close places of worship is exempt from disclosure under section 35(1)(a) and 42 of the **Freedom of Information Act** and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A to this letter.

Next steps

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

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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: Freedomofinformation@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 A

Application of exemptions

The Freedom of Information Act provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold documents relating to your request under the following FOIA exemption and our consideration of the identified exemptions is set out below:

- Section 35(1)(a) of the FOIA covers any information relating to the formulation and development of government policy.
- Section 42 Legal Professional Privilege which covers communications between lawyers and their clients for the purpose of obtaining legal advice

Section 35(1)(a)

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 the closing of places of worship during the recent 'firebreak' restrictions. As with most of the policies and legislation relating to the Covid-19 pandemic, this policy is under constant review and is revised regularly as circumstances change 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. Key documents informing decision-making have already been published, as noted above.

Public interest arguments in favour of withholding

The Welsh Government has endeavoured to ensure it is 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 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.

Ministers and policy officials need to be able to discuss recommendations and formulate new proposals with regards to deal 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.

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.

Section 42 Legal Professional Privilege

Section 42 of the Freedom of Information Act states:

1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the "dominant" (main) purpose of litigation. The information in question was advice provided by the Welsh Government's legal services and we believe that LPP attaches to this information.

The section 42 exemption is qualified, which means that it is subject to a public interest test. That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission and DTI* [EA/2005/0023] in which the tribunal, on the subject of LPP said:

"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...".

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial prejudice.

Legal advisers need to be able to present the full picture to their client, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege. Moreover, disclosure of legal advice has a significant potential to prejudice the governments' ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.

In weighing up the arguments for and against release, we consider that the public interest in withholding the information is sufficient to outweigh the public interest in its disclosure. To that end, the information has been withheld under section 42.