



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref ATISN 14868

12 March 2021

Dear

### **Request for Information – ATISN 14868**

I wrote to you on 17 February with my understanding of what you had asked for in your request for information. Given I have heard nothing further from you on that point, I have considered your request on that basis. I note also your e-mail dated 11 March. Please accept my apologies with the delay in providing you with this response.

### **Your Request**

1. A copy of the guidance, rules and procedures issued by the Welsh Government to local authorities in Wales for the administration of the Restrictions Business Fund.
2. Contact details for the Welsh Government's auditor who checked the administration of the scheme by local authorities.

### **Our Response**

I confirm the Welsh Government holds some information caught by your request. A copy of the guidance referred to in your first question is enclosed.

For your second question, the schemes have been considered by both the Welsh Government internal audit teams and Audit Wales. The names of the Welsh Government individual internal auditors are withheld from disclosure under Section 40, personal information, of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given at Annex A to this letter.



Llywodraeth Cymru /  
Welsh Government  
Parc Cathays / Cathays Park  
CF10 3NQ

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 .

## **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 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

## Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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, some of the information contained within the information caught by your request contains third party personal data. Specifically, this relates to the name(s) of the Welsh Government individual internal auditors.

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:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. 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 Interest Test

The Welsh Government does not believe there is any legitimate reason why the personal data, that is the name(s) of the Welsh Government individual internal auditors, would need to be released. In undertaking audit work, the officials are representing the Welsh Government rather than themselves as individuals. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

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

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. The individuals do not have public facing roles within the organisations and would therefore not expect their names to be released into the public domain. Rather, there are generic mechanisms in place for contacting the Welsh Government.

## **3. The Balancing Test**

As it has been concluded it is not necessary to disclose the identity of the Welsh Government internal auditors, there is no requirement to balance the rights and interests of those officials against the rights, under FOIA, of the requester.

To conclude, 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.