



Llywodraeth Cymru
Welsh Government

ATISN 15544

21 October 2021

Dear

ATISN 15544 – Copies of emails

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 21 September. You requested the following -

- 1. Of the 136 emails referenced within your previous request (ATISN 15392), how many concern the organisations Attain and Consultant Connect?*

Response

Welsh Government can confirm that six of the emails referenced within your previous request relate specifically to the organisations 'Attain' and 'Consultant Connect'. It is important to note that a majority of these emails would already be within your possession. These have been attached at Document 1. Please note, certain information caught within the scope of this request has been exempted under Section 42 of the Freedom of Information Act 2000. A rationale for the use of this exemption is set out at **Annex 1**.

Additionally, certain information caught within the scope of this request has been exempted under Section 40 of the Freedom of Information Act 2000. A rationale for the use of this exemption is set out at **Annex 2**.

Next Steps

The request you sent me contains personal information about you - for example, your name and address. The Welsh Government will be the data processor for this information and, in accordance with the General Data Protection Regulation, it will be processed in order to fulfil our public task and meet our legal obligations under the Act to provide you with a response.

We will only use this personal information to deal with your request and any matters which arise as a result of it. We will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Under data protection legislation, you have the right:

- to be informed of the personal data we hold about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further information about the information which the Welsh Government holds and its use, or if you wish to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
Email: DataProtectionOfficer@gov.wales

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
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 1

Section 42 of the Freedom of Information Act

Section 42 of the Freedom of Information Act sets out an exemption from the right to know information protected by Legal Professional Privilege. This is a Common Law principle that covers communications between legal professionals and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the main purpose of litigation.

This exemption is a qualified one, which means that the Council has to apply a public interest test before the application of it. This therefore leaves the Council applying a two stage test, firstly, is the information covered by Legal Professional Privilege and secondly, does the public interest in maintaining the exemption outweigh the public interest in disclosure.

Section 42 of the FOIA states:

‘42(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’.

Litigation Privilege

The Information Commissioner’s Guidance states that ‘Litigation Privilege applies when litigation is underway or anticipated. There must be a reasonable prospect of litigation - real likelihood, not just a fear or possibility’.

Clearly in these circumstances the matter is before a court. The guidance goes on to state that the documents ‘must have been created for the dominant purpose of obtaining legal advice on the litigation or for lawyers to use in preparing the case’. Again in these circumstances the information that has been requested has been created with the dominant purpose of preparation and case management, I am therefore content that the information is covered by the section 42 exemption.

Is there a legitimate public interest in disclosure?

It is accepted that you, as the applicant, have an interest in the documents requested. In deciding whether there is a legitimate interest, it is the collective public interest which must be taken into account and not the specific interest of the applicant. The guidance further states that there must be a genuine public interest, and not merely public curiosity.

Is disclosure necessary to meet that public interest?

Section 42(1) of the Freedom of Information Act (2000) recognises the validity of withholding information that is subject to Legal Professional Privilege (LPP), which exists in order to encourage NWSSP employees to be frank and open with their legal advisers. It is important that the NWSSP is able to seek legal advice so that it can make its decisions in the correct legal context.

The legal adviser must be in possession of all material facts in order to provide sound advice. The NWSSP must, therefore, feel confident that it can disclose all relevant facts to

its legal adviser. It should be able to do so without fearing that this information will be disclosed to the public. Transparency of decision making and knowing that decisions are taken in the correct legal context are two reasons why it might be argued that information subject to section 42(1) should be disclosed.

However, the process of providing legal advice relies for its effectiveness on each side being open and candid with the other. Such candour is ensured by the operation of LPP. For this reason, it is considered that the public interest in maintaining LPP under section 42(1) in respect of some of the information that would fall within the scope of your request outweighs the arguments in favour of disclosure.

Annex 2

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 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.

Our consideration of these tests is set out below:

1. Legitimate interests

Your request indicates you are interested in obtaining copies of correspondence relating to the organisations 'Attain' and 'Consultant Connect'. We have concluded that, in this instance, there is little to be gained from releasing the names of individuals included within the attached documentation. We believe we have provided sufficient information to satisfy the legitimate interest and we do not believe disclosure of the identities of those consultants would allow any greater understanding.

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.