

15 July 2022

Dear

Request for Information – ATISN 16417

I wrote to you on 11 July regarding your request for information.

Information requested

You asked for the following information regarding the details of the draftsman who drafted 'The Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005':

1. Please confirm if the draftsman did not or does not hold a public office and the drafting tasks were outsourced to a private organisation i.e. a law firm or a Barrister's Chambers.
2. If that was the case, then kindly provide me with the name of the private individual or the organisation which drafted this statutory instrument.

Our Response

I can confirm the Welsh Government holds some information captured by your request.

In relation to question 1, as far as we are aware, the Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005 (the 2005 Order) was drafted by the civil service, it was made and scrutinised by the National Assembly for Wales (as existed in 2005). We do not hold any information to suggest that the drafting was outsourced to a private organisation.

In relation to question 2, as stated in our previous correspondence to you (dated 22 September 2021, ref ATISN 15457), the personal data contained in the information you have requested is exempt from disclosure under section 40(2) (personal data) of the Freedom of Information Act 2000 (FOIA) and is therefore withheld. Full reasoning for applying this exemption is appended at Annex A.

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. 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

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.

- We have decided to withhold the personal data (i.e. the name of the civil servant who drafted the Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005) contained in the information you have requested under section 40 of the Freedom of Information Act 2000 (FoIA), (personal data).

This Annex sets out the reasons for the engagement of section 40 of the FoIA.

Engagement of section 40(2) of the FoIA – Personal Data

The Welsh Government believes the personal data contained in the information being released with this request should be exempt from disclosure.

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 2018 (‘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 name of the private individual or individuals who drafted this statutory instrument contains personal data.

Under section 40(2) and (3A) 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 UK General Data Protection Regulation (UK 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”*

In order to be lawfully processed there must be a legal basis under Article 6 of the UK GDPR to process personal information. The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f) of the UK GDPR. 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

We do not believe there is any legitimate reason why the personal data requested would need to be released. The Commonhold and Leasehold Reform Act 2002 (Commencement No. 3 and Saving and Transitional Provision) (Wales) Order 2005 (the 2005 Order) was drafted by the civil service, made and scrutinised by the National Assembly for Wales (as existed in 2005). In order to interpret and understand the 2005 Order, the text of that Order is all that is needed. The identity of any particular individual civil servant engaged in the preparation of the 2005 Order does not assist with the interpretation or understanding of that Order. As such it is irrelevant as to who drafted that Order. The Welsh Government cannot identify any 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. It is entirely possible to interpret and understand the 2005 Order without the personal data which has been requested. As such, the Welsh Government is of the view that it is not necessary to disclose the personal data caught by your request.

3. The Balancing Test

As it has been concluded that there is no necessity to disclose the personal data of another individual, the fundamental rights and freedoms of the affected third party prevail in this instance and releasing the information cannot be justified under Article 6(1)(f).

Conclusion

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