



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref ATISN 16404

Dear ,

### Request for Information – ATISN 16404

In your email of 15 June 2022, you asked to be supplied with the following information:

1. Copy of the formal complaint sent from Women Connect First director Maria Mesa to Welsh Government about the Diverse Women of Covid campaign by Chwarae Teg and Welsh Women's Aid.
2. All communication emails and meetings minutes between Women Connect First (Diverse Women of Wales) and Welsh Government regarding the complaint.
3. All communications emails and meetings minutes between Welsh Government and Chwarae Teg and Welsh Women's Aid regarding the complaint.
4. A copy of the review report commissioned by Welsh Government following the Women of Covid campaign.

A copy of the information we have decided to release is enclosed.

In an initial response on 13 July, we advised that the Welsh Government believes that the following information related to your request should be exempt from disclosure:

- The final Women of Covid review report.
- The original complaint letter.
- Four notes of meetings between Welsh Government with either Diverse Women of Wales, Chwarae Teg or Welsh Women's Aid.
- Two emails relating to meetings.
- One text message

After careful consideration of the issues, we have concluded that the information listed above is exempt from disclosure under the following sections of the Freedom of Information Act 2000 ("the Act"):

- Section 36(2)(b)(ii) - inhibiting the free and frank exchange of views for the purposes of deliberation.



BUDDSODDWYR | INVESTORS  
MEWN POBL | IN PEOPLE

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

FOI.EconomyandInfrastructure@gov.wales

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 .

- Section 36(2)(c) – otherwise prejudice the effective conduct of public affairs.
- Section 40 – personal data.

An explanation of our application of these exemptions and the public interest tests (where relevant) is set out at the Annex to this letter.

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

## **Annex**

This Annex sets out the information you have requested and the corresponding reasons for the engagement of section 36 (effective conduct of public affairs) and where required, our subsequent consideration of the Public Interest Test.

1. Copy of the formal complaint sent from Women Connect First director Maria Mesa to Welsh Government about the Diverse Women of Covid campaign by Chwarae Teg and Welsh Women's Aid.
2. All communication emails and meetings minutes between Women Connect First (Diverse Women of Wales) and Welsh Government regarding the complaint.
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4. A copy of the review report commissioned by Welsh Government following the Women of Covid campaign.

### **Section 36 - Effective Conduct of Public Affairs**

The Act has introduced a two-stage process for considering and using the section 36 exemption. Stage 1 is to ascertain whether the basic conditions for triggering the application of the exemption apply. This is the role of the 'qualified person' and in relation to the Welsh Government, the qualified person is the Counsel General to the Welsh Government. If the qualified person decides that the information would, or would be likely to, have the specified adverse effect(s), then the exemption is said to be engaged and Stage 2 can commence.

#### **Stage 1 – Engagement of Exemption**

After due consideration, the 'qualified person', has agreed that section 36(2)(b)(ii) and section 36(2)(c) are engaged for the following reasons:

#### **Section 36(2)(b)(ii) – inhibiting the free and frank exchange of views for the purposes of deliberation**

This complaint was raised in a very particular manner, outside of the formal organisational complaints process on offer from Chwarae Teg and Welsh Women's Aid. The investigation was a Ministerial prerogative and was undertaken by the report author on the basis that the information to be collected and the conclusions to be reached were for the Minister's purposes only.

The report author undertook the work based on this fundamental principle and in the spirit of confidentiality and the organisations who participated in the review were clear in their expectation that the report would not be published. On that basis, the parties all engaged in a free and frank basis.

Were the Welsh Government to release the information requested and breach the confidence of the 3rd parties involved, it would be likely to prevent these and other organisations from participating in voluntary reviews such as these and in such a free and frank manner in the future. This would have negative consequences on our ability to process complaints and seek resolution to issues and concerns.

Releasing this information into the public domain would be likely to inhibit further free and frank discussion between parties seeking resolution to this matter and other matters in the future. Officials believe that these harmful effects are relevant to the “would be likely” limb of section 36(2)(b)(ii).

**Section 36 (2)(c)** – *would otherwise prejudice the effective conduct of public affairs.*

If the report, wider minutes of discussions and other correspondence received from the various parties were released publicly it would be likely to prejudice our ongoing relationships with the organisations in question, both of which are delivery bodies of key activity for Welsh Government. Guidance from the Information Commissioner on section 36(2)(c) states:

*Prejudice to the effective conduct of public affairs could refer to an adverse effect on the public authority’s ability to offer an effective public service or to meet its wider objectives or purpose, but the effect does not have to be on the authority in question; it could be an effect on other bodies or the wider public sector. It may refer to the disruptive effects of disclosure, for example the diversion of resources in managing the effect of disclosure*

Here, the organisations believed they were dealing with Welsh Government under the cover of confidence and to release their candid comments and pro-actively provided information into the public domain would be likely to impact on those organisations and undermine their credibility and ability to work effectively.

Looking wider, release would be likely to prejudice our ability to commission similar processes of review or investigation where organisations are under no obligation and choose to participate voluntarily; we are not always in a position to require an official investigation or review because our relationship with organisations vary.

Organisations will be less likely to participate in such a process or to engage with it openly and with a view to learning if they believe anything they share may be released publicly. This would be likely to prejudice the conduct of our work and reduce the scope for improvement.

## **Stage 2**

Section 36 is a public interest tested exemption. This means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

Guidance from the Information Commissioner’s Office states that *“information may be exempt under section 36(2)(b)(i) or (ii) if its disclosure would, or would be likely to inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The rationale for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision making by the public authority”*.

The section 36(2)(c) exemption can be applied if releasing the information would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs, and is about the process that may be inhibited, rather than what is in the information.

## **Public interest arguments in favour of release.**

It is important to note that, regardless of the particular interests of the requester, requests under the Act are treated as ‘applicant blind’ and any release is made to the world at large. With that in mind, the Welsh Government acknowledges the inherent public interest in the openness and transparency that release of the information would engender. It would also demonstrate that Government officials and Ministers are fully exploring all possible avenues so that business support decisions are based on sound evidence.

## **Public interest arguments against release.**

**Section 36(2)(b)(ii) would, or would be likely to, inhibit *the free and frank exchange of views for the purposes of deliberation***

As set out above, the information withheld was provided within the context of confidentiality. As such, the parties engaged in free and frank discussions with the expectation that those discussions would not be made public. Were the Welsh Government to release the information requested and breach the expectations of confidence of the 3rd parties involved, it would be likely to prevent these and other organisations from participating in voluntary reviews such as these and in such a free and frank manner in the future. This would have negative consequences on our ability to process complaints and seek resolution to issues and concerns.

Releasing this information into the public domain would be likely to inhibit further free and frank discussion between parties seeking resolution to this matter and other matters in the future. Officials believe that these harmful effects are relevant to the “would be likely” limb of section 36(2)(b)(ii).

**Section 36(2)(c) – would otherwise prejudice, or would be likely *otherwise to prejudice, the effective conduct of public affairs.***

As indicated under Stage 1 above, the organisations and individuals involved in the production of the report were given clear assurances that the report would not be published and that confidentiality would be preserved with regard to the foregoing investigation. Publication of the report and related materials would be likely to be seen as a breach of trust by the Welsh Government, with significant implications for the organisations directly involved but also more widely.

Release would be likely to prejudice our ability to commission similar processes of review or investigation where organisations are under no obligation and choose to participate voluntarily; we are not always in a position to require an official investigation or review because our relationship with organisations vary. Organisations will be less likely to participate in such a process or to engage with it openly and with a view to learning if they believe anything they share may be released publicly. This would be likely to prejudice the conduct of our work and reduce the scope for improvement.

Officials believe that these harmful effects are relevant to the “would be likely” limb of section 36(2)(c).

## 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 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 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 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

Whilst Welsh Government recognises that there is a legitimate interest in seeking this information, we do not believe that the names of officials, third parties and their direct contact details adds any material value to the content of the correspondence (etc.) being requested. The information is clearly between the parties stated in the request and the actual names of the originators is regarded as peripheral in context.

### 2. Is disclosure necessary?

As above, as the request is for correspondence (etc.) between the named organisations, we do not believe disclosure of actual names is necessary. This is confirmed by ICO guidance that states the Freedom of Information Act “*must therefore be the least intrusive means of achieving the legitimate aim in question*”.

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

Although we have concluded that it is not necessary to release the redacted personal data in order to provide the information requested, we can confirm that the Welsh Government officials whose names have been redacted would have no reasonable expectation that their names would be released in this way. In terms of any third parties, then as stated previously, the correspondence was conducted with the expectation of confidentiality, and they would have had no expectation their personal data would be made public in this context.

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.