

16 March 2023

Dear

**ATISN 17169**

Thank you for your requests, which I received on 16 February 2023. You asked for the following information:

**Part 1**

*The number of Ministers who live within a 15-minute walk of a bus and/or train service?*

*The number of Ministers who use either public transport, cycle or walk to get to the Senedd?*

*The number of Ministers who use either public transport, cycle or walk to get to their constituency office?*

**Part 2**

*The number of Ministers who own a second home.*

**Response to Part 1**

- 1) The Welsh government does not hold any such information.
- 2) We do not record details of how Ministers travel to the Senedd, other than when official cars are used.
- 3) The Welsh Government does not hold any such information. When Ministers act in a constituency capacity, they are doing so in their separate role as a Member of the Senedd, and not in a governmental/Ministerial capacity.

**Response to Part 2**

Under section 40(5) of the Freedom of Information Act 2000 (FOIA) we can neither confirm nor deny that the information requested is held. The request asks for information which we believe would be personal data. If relevant information were held, we believe it would be exempt under Section 40(2) of the FOIA – please see Annex A for more information on this exemption.

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 e-mail: [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

Telephone: 0303 123 1113

Website: [www.ico.org.uk](http://www.ico.org.uk)

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 information

Section 40(2) of the Freedom of Information Act 2000 (“FOIA”) sets out an exemption from the right to know if the information requested is personal information of someone other than the requester and is protected by the Data Protection Act 2018 (“DPA”) or the General Data Protection Regulation (“GDPR”).

Personal data is defined in Section 3(2) of the DPA as:

“Personal data” means any information relating to an identified or identifiable living individual.

If information within scope of this request were held, it would be exempt 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 General Data Protection Regulation (GDPR) and section 34(1) DPA. We consider the principle being most relevant in this instance as being the first.

### The first GDPR principle.

This states:

.....that personal data shall be:

a) processed lawfully, fairly and in a transparent manner in relation to the data subject; I consider that if the information requested were held, it would fall within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle.

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.4) states:

If disclosure would not be fair, then the information is exempt from disclosure. This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information commissioner and East Hertfordshire District Council where it was held: “The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached.

(paragraph 63).

It is my view that, if information within the scope of this request were held, its release would be unfair and so breach the first data protection principle – there would be no expectation by data subjects that details of their private homes would be disclosed to the public. For that reason, the information should be withheld under section 40(2) FOIA. This is an absolute exemption and not subject to the public interest test.

Section 40(5) FOIA provides that a public authority is under no duty to confirm nor deny whether it holds information where it would breach the data protection principles to do so.