

3 October 2023

Dear

**ATISN 18911 – WPPN 09/21**

**Information requested**

Thank you for your request which I received on 5 September 2023.

**You requested:**

- 1) Information, communications, and source and underlying data, created or relied upon by the Welsh Government and its advisers in preparing Section 3 of WPPN 09/21 in relation to or concerning the following:
  - a) the existence of supply shortages of materials in the manufacturing sector and consequential increases in the prices of those materials;
  - b) the impact of COVID-19 (including any government restrictions put in place as a result of COVID-19) on the prices of materials in the manufacturing sector; and
  - c) the impact of other variables and market pressures on the prices of materials in the manufacturing sector.
- 2) Any draft versions of WPPN 09/21.

**Our response**

- 1) a,b,c - The information presented in Section 3 of WPPN 09/21 was drawn from the sources as referenced under section 11 within the WPPN. In addition, insights were drawn from the following published information: -

[PAN - Construction Materials Price Increases 3 August 21 \(finance-ni.gov.uk\)](#)  
[Coronavirus \(COVID-19\): impact on construction contracts: CPN 1/2020 - gov.scot \(www.gov.scot\)](#)  
[Market Update on Material Shortages \(bluelightcommercial.police.uk\)](#)

- 2) The draft WPPN is attached at Annex A.

**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. I have concluded that this relates to the names (and other associated personal information) of those exchanging correspondence (other than where they have been named in your correspondence), panel members and the successful candidates/appointees captured by your request.

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**

Welsh Government acknowledges the legitimate interests of openness and transparency that release would engender.

### **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 as this would breach data protection and the information within the draft WPPN (attached at Annex A) can still be understood without disclosure of personal information.

### **3. The Balancing Test**

As it has been concluded it is not necessary to disclose the personal information

caught by the request, there is no requirement to balance the rights and interests of those individuals 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.

### **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