

8 April 2024

Dear

ATISN 20329 – Closed list electoral system

Information requested

Thank you for your request which we received on 11 March 2024.

You asked for:

- Welsh Government documents regarding the Government's decision to include a closed list electoral system in the Reform Bill (*I take this to mean the Senedd Cymru (Members and Elections) Bill*).
- Any research and discussions took place prior to the publication of the bill that ultimately led to this decision.
- Whether the Government consider Plaid Cymru's opposition to the system.

Our response

We have found that some of the information requested in relation to the first part of your request is already in the public domain and links to this information are provided at **Annex A**.

A copy of the information that we have decided to release is enclosed at **Annex B** (Please see separate attachment).

We have decided that some of the information requested by the first part of your request is exempt from disclosure under section 35 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at **Annex C** to this letter.

Following a search of our paper and electronic records, we have established that, in relation to your second and third points, the information you have requested is not held by the Welsh Government.

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

Information already available in the public domain

Our considerations found that some of the information you have requested is already in the public domain. The documents relate to the first part of your request, relating to the decision to include the closed list electoral system in the Senedd Cymru (Members and Elections) Bill).

A letter and joint position statement on Senedd Reform from the First Minister and the leader of Plaid Cymru to the Special Purposes Committee on Senedd Reform, 10 May 2022:

<https://business.senedd.wales/documents/s126205/Written%20submission%20-%20Senedd%20reform%20joint%20position%20statement.pdf>

The report of the Senedd's Special Purpose Committee on Senedd Reform, which considered a range of voting systems prior to recommending the use of a closed list system:

senedd.wales/media/5mta1oyk/cr-ld15130-e.pdf

The Welsh Government's written response to the recommendations made by the Senedd's Special Purpose Committee on Senedd Reform:

[gen-ld15253-e.pdf \(senedd.wales\)](https://senedd.wales/gen-ld15253-e.pdf)

Minutes of a meeting of the Cabinet on 12 June 2023:

<https://www.gov.wales/cabinet-meeting-12-june-2023-html>

Annex B

Please see separate attachment.

Annex C

Application of exemptions/exceptions

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.

I have decided to withhold information in line with the below exemptions under the FOIA:

Considerations and advice on policy in relation to a live policy area	Section 35 – Formulation of Government Policy
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This Annex sets out the reasons for the engagement of section 35 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Section 35(1) – Formulation of government policy, etc.

The Welsh Government believes that some of the information we hold regarding your request relates to the formulation and development of Government policy.

This exemption states, inter alia:

35 Formulation of government policy, etc.

(1) Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to—

(a) the formulation or development of government policy,

The exemption acknowledges that government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. The information captured by this request relates to the formulation of government policy.

This exemption is a time limited one and applies for as long as the policy is in development. For these purposes, this will be until the development and refinement of that policy is completed.

Section 35 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 outweighs that in releasing.

Public interest arguments in favour of disclosure

The Welsh Government recognises that there is a public interest in the openness and accountability of government, and that releasing the requested information would help the public gain a better understanding of the basis upon which the decision was reached.

Public interest arguments in favour of withholding

The information requested concerns a Bill – the Senedd Cymru (Members and Elections) Bill – which is currently being considered by the Senedd. The specific details of the policy are therefore still being considered by Members and are subject to debate and amendment. Advice on the policy and its handling relies on the safe space for free and frank exchange of views amongst those involved in the formulation of policy. Should this information be released, there would be a chilling effect on further such exchange of views that would not be in the public interest.

We consider it important for ministers and officials to be able to have a safe space to undertake discussions and believe their candour in doing so would likely be affected by a fear of whether the content of such advice would be made public.

In terms of the public interest in this area, the Welsh Government has endeavoured to ensure we are as transparent as possible through the media, publication of documents, Ministerial meetings with stakeholders, public statements in the Senedd, contributions to the Special Purposes Committee on Senedd Reform's inquiry, as well as the usual detailed scrutiny process for a Government Bill.

In conclusion we believe it is within the wider public interest to withhold the information related to this request in order to provide the government with a safe space to consider and form policy, especially in the context of ongoing scrutiny and amendment of the legislation. To that end, the information has been withheld under s35(1)(a).

Balance of public interest test

Although there is a public interest in understanding the decision made and the process which led to it, it is not necessary that documents relating to the consideration and advice of that policy be made known. Although such documents may have informed any deliberations, the context of the decision lies outside of the advice itself. It is intended that the policy be given effect through the Senedd Cymru (Members and Elections) Bill, which is currently being scrutinised by the Senedd, having completed Stage 2 on 6 March 2024, and with further stages outstanding. Therefore, the Welsh Government believes that information provided by officials in the context of policy development of a still-live policy area should be exempt from disclosure.