

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 February 2012

**Public Authority:** Wales Office  
**Address:** Gwydyr House  
Whitehall  
London  
SW1A 2NP

#### Decision (including any steps ordered)

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1. The complainant requested the names of individuals invited to attend a St David's Day Event at Gwydyr House.
2. The Commissioner's decision is that the public authority was correct to withhold the requested information on the basis of the exemption at section 40(2) of the Freedom of Information Act (the Act).
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 31 March 2011 the complainant wrote to the public authority and requested information. The request was worded as follows:  
*'.....the Secretary of State for Wales to name each person who was invited to attend the Wales Office St David's Day Event at Gwydyr House on 1<sup>st</sup> March 2011.'*
5. The public authority responded on 30 June 2011. It withheld the names requested on the basis of the exemption at section 40(2).
6. Following an internal review the public authority wrote to the complainant on 1 August 2011. It upheld the application of section 40(2).

7. On 5 August 2011 the public authority disclosed the names of those who were invited and attended the St David's day event on 1 March 2011 at Gwydyr House.

### **Scope of the case**

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8. On 30 August 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. In broad terms, the complainant submitted that recipients of official entertainment at tax payers' expense would have a reasonable expectation that their names could be publicly disclosed as part of actions or steps to maintain accountability and transparency with regards public expenditure.
10. The scope of the Commissioner's investigation was to determine whether the information requested above by the complainant on 1 March 2011 – which was not disclosed on 5 August 2011 - had been correctly withheld on the basis of the exemption at section 40(2).

### **Reasons for decision**

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11. Information is exempt from disclosure on the basis of the exemption at section 40(2) of the Act if the information constitutes personal data and either the first or second condition in section 40(3) is satisfied.
12. Personal data is defined in section 1(1) of the Data Protection Act 1998 (the DPA) as:  
  
*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'*
13. The names of persons who were invited to the St David's event relate to identifiable individuals and clearly constitute their personal data as defined by the DPA.

Would the disclosure of the names contravene any of the Data Protection Principles?

14. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that the disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.
15. The first data protection principle states:  
  
*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*
  - (a) *at least one of the conditions in Schedule 2 is met, and*
  - (b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*
16. The Commissioner first considered whether disclosing the names requested would have been fair to the individuals in question.
17. The public authority explained that the list of names had been originally prepared for a related proposed event without seeking the consent of the individuals on it. The list was consequently provided to the Central Office of Information to send out invitations for the St David's day event.
18. The public authority submitted that it was reasonable for those who attend receptions paid for at the taxpayers' expense (as opposed to those who are invited to do so but did not attend) to expect to have that fact made public. However, in the public authority's view, it would be unfair to disclose the names of those who had not sought an invitation, and did not attend the St David's day event at Gwydyr House.
19. The public authority argued that there was a serious risk that disclosure would result in speculation in the media about the invitees who could be contacted to comment on why they had not attended the event. This would draw attention to individuals who perhaps would prefer not to draw such attention to themselves. It was therefore reasonable to assume that those who were invited but did not attend would not expect their names to be made publicly available in that context especially given the likelihood that some of them were not aware of their names being on a database from which an invitation to the St David's day event could be extended to them. Disclosure would have been unexpected, and in the circumstances, also unfair to the individuals in question.
20. The Commissioner agrees with the public authority that disclosure would have been unfair. He also agrees that the recipients of official entertainment would have a greater expectation that their names could

be disclosed under the Act. The individuals in question were invited but chose not to attend the event and therefore did not receive official entertainment.

21. In view of the above, the Commissioner finds that disclosing the names of the non-attending invitees would have been unfair to the individuals in question and consequently in contravention of the first data protection principle. He therefore finds that these names were exempt from disclosure on the basis of the exemption at section 40(2) of the Act.

## Right of appeal

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22. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

23. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**