

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2016

Public Authority: Welsh Government
Address: Cathays Park
Cardiff
Cf10 3NQ

Decision (including any steps ordered)

1. The complainant requested information relating to a meeting held to discuss the authority's dealings with him. The Welsh Government stated that it did not hold the information requested. The Commissioner has investigated and found that the requested information, if held, would constitute the personal data of the complainant and would therefore be exempt under section 40(1). The Commissioner requires no steps to be taken.

Request and response

2. On 21 February 2016 the complainant wrote to the Welsh Government and requested information in the following terms:

"I formally request under the DP/FOI acts information relating to the meeting held in camera between Issacs [sic] and the predecessor to the PSOW in relation to their dealings with me. I want to know what was discussed in that meeting which allowed the WO/WAG to stop responding to me.

This request was made verbally in the meeting in Swansea on October 28 2015 and followed up with requests in emails. I now believe you have 28 days to respond. You did ask for the officers name and I did provide that information in an email I also believe I copied you on a letter to Issacs [sic] relating to the problems."
3. The Welsh Government responded on 2 March 2016 and referred to previous requests for the information received from the complainant in

2013. The Welsh Government confirmed that it did not hold the information requested, as it had previously advised.

4. On 2 March 2016 the complainant requested an internal review of the Welsh Government's handling of the request. He referred to having previously been told that "all records of that age would have been archived". He also indicated that the meeting in question may not have been attended by "Isaacs", but another officer.
5. The Welsh Government provided the outcome of its internal review on 4 April 2016 and upheld its decision that the information requested was not held. The Welsh Government also confirmed that no discussion/meeting was held about the matter in question and as such, it did not hold any information relevant to the request.

Scope of the case

6. The complainant contacted the Commissioner on 6 April 2016 to complain about the way his request for information had been handled. He asked the Commissioner to investigate whether the information he had requested should be disclosed.
7. During the course of his investigation, it became clear to the Commissioner that the information requested, if held, would constitute the complainant's own personal data. For clarity, a requester's own personal data is exempt under section 40(1) of the FOIA. Personal data is defined by the Data Protection Act 1998 ('the DPA') as any information relating to a living and identifiable individual. The Commissioner considers that the complainant has actually requested access to his own personal data. The separate right of access provided by section 7 of the DPA therefore applies. The Commissioner has considered this matter separately. This notice only relates to the FOIA aspects of the request.

Reasons for decision

Section 40(1) – the exemption for personal data

8. The Welsh Government's position is that it does not hold the requested information as no discussions took place about future dealings with the complainant.
9. Although the Welsh Government has not at any stage cited section 40 of the FOIA, based on the wording of the request as it appears to relate to

the complainant, the Commissioner believes it appropriate to consider this exemption. The Commissioner will not proactively look to consider exemptions in all cases, but where personal data is involved the Commissioner believes he has a duty to consider the rights of data subjects. These rights, set out in the Data Protection Act, are closely linked to article 8 of the Human Rights Act and the Commissioner would be in breach of his obligations under that Act if he ordered disclosure of information without having considered these rights, even if the public authority has not cited the exemption.

10. Under section 40(1) any information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).
11. In this case it is apparent that any information falling within the scope of the request is the personal data of the complainant as it relates to his communications and dealings with the Welsh Government and the Public Services Ombudsman for Wales. The Commissioner considers that he is a 'data subject' within the meaning of the section 40(1) exemption and therefore he concludes that the requested information, if held, would be his personal data and therefore the section 40(1) exemption applies.

Right of appeal

12. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. 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.
14. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF