

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2018

Public Authority: Welsh Government

Address: freedom.ofinformation@gov.wales

Decision (including any steps ordered)

1. Following a previous decision notice, the Welsh Government provided an explanation in terms of its record keeping and possible ways of refining a request about receipts held regarding expenditure charged on government procurement cards. It also provided some information in respect of a limited number of receipts but redacted the names on those receipts in reliance on section 40(2) of the FOIA. The Commissioner is satisfied that disclosure of the withheld information would breach the Data Protection Act 1998 and in so doing, that section 40(2) FOIA is engaged.
2. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

3. On 24 July 2016, the complainant wrote to the Welsh Government and requested the following information in respect of media article which related to an audit of all Welsh Government procurement cards/invoices totalling approximately £7.5 million:

"...the original receipts for WG [Welsh Government] procurement cards / invoices for the purposes of the audit described in article ...outlined in a 259-page document showing the £1.4 that was spent on the 237 active cards in the 2015-16 financial year."
4. The Commissioner does not intend to revisit the Welsh Government's handling of this request prior to decision notice FS50657073 being issued, as this was detailed in paragraphs 5 to 15 of that notice, but will

instead focus on the response following the serving of that notice, a link to which can be found below:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014964/fs50657073.pdf>

5. On 23 October 2017, the Welsh Government wrote to the complainant providing a description of the information held both centrally and by department in respect of receipts and procurement card expenditure, assistance as to how she might refine her request, and a response to her refined request.
6. The complainant contacted the Welsh Government on 25 October confirming that she would take advice in respect of its response and stating that it had still not addressed her refined request of 24 November 2016. This request was connected to both the original and refined requests referred to in decision notice FS50657073 but which was not subject to a complaint.
7. The request did however ask the Welsh Government to state how long it would take to extract the following data:
 - *£370 of luxury yachtwear,*
 - *iTunes subscriptions totalling £377.32*
 - *more than £1500 of Welsh cakes,*
 - *A ToysRUs transaction of nearly £280.*
 - *Bills for accommodation included stays worth £9043.79 at the Raffles Hotel in Beijing*
 - *£1450.76 at the £300 –a-night Hotel New Otani in Tokyo.*
 - *Two transactions at the InterContinental Hotel in Qatari capital Doha also featured.*
 - *Bags4Everything - £45.99 purchase.*
 - *Three payments for accommodation at the Hotel New Otan.”*
8. Following a complaint to the Commissioner, the Welsh Government provided information in respect of the refined request referred to in paragraphs 6 and 7 of this notice for completeness. Whilst it provided most of the information, it redacted the names of some officials on a small number of receipts on the basis of section 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 25 January 2018 to confirm that she was still waiting for a response in respect of the refined request referred to in paragraphs 6 and 7 of this notice. She subsequently confirmed to the Commissioner that she was not satisfied with the Welsh Government's reliance on section 40(2) of the FOIA in respect of the information withheld regarding this request.
10. The Commissioner considers that the scope of her investigation is to consider the Welsh Government's reliance on section 40(2) of the FOIA.

Reasons for decision

Section 40 – personal information

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
12. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

Is the requested information personal data?

13. Personal data is defined at section 1(1) of the DPA as:

"personal data means data which relate to a living individual who can be identified-

- (a) from those data,*
- (b) 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 other person in respect of the individual."*

14. When considering whether the information is personal data, the Commissioner has taken into consideration her published guidance: *"Determining what is personal data"*.¹
15. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
 - (i) *"Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*
 - (ii) *"Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*
16. The Commissioner notes that the information withheld are the names of a number of Welsh Government officials on copies of the receipts either in respect of internal transactions for items and subscriptions bought on behalf of the Welsh Government, or officials requiring hotel accommodation while carrying out their role as Welsh Government employees. The Commissioner is therefore satisfied that the withheld information constitutes personal information as defined by DPA 1998.
17. The Commissioner notes that the Welsh Government considers that disclosure of the withheld information would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

18. The first data protection principle requires that the processing of personal data be fair and lawful and,
 - 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 met.
19. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

20. In her consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- a. The reasonable expectations of the data subjects.
 - b. Consequences of disclosure.
 - c. The legitimate interests of the public

The reasonable expectations of the data subject

21. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.² Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

22. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, not all information relating to an individual's professional or public role is automatically suitable for disclosure.
23. The Commissioner considers the seniority of the data subject is an important factor when considering their reasonable expectations, and in her view, the more senior a person is, the less likely it will be unfair to disclose information about him or her acting in an official capacity.

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx

24. In this particular case, the Commissioner notes that the information relates to various Welsh Government officials and has been divided into those whose names relate to receipts in respect of internal transactions for items and subscriptions bought on behalf of the Welsh Government, and those relating to officials requiring hotel accommodation whilst carrying out their official role as Welsh Government employees.

(i) Individuals in respect of internal transactions for items and subscriptions bought on behalf of the Welsh Government

25. The Welsh Government has provided the job titles of each of these individuals and confirmed that none of the officials are senior civil servants, but officials who at one point in time had the responsibility for administering the transactions in question on behalf of the Welsh Government. It has further confirmed none of the roles were public facing and that they were not in any way personal purchases. It has further stated that in undertaking these purchases the individuals would have had no expectation that their names would have been made public in this context. The Commissioner accepts that these arguments accord with the reasonable expectations of most reasonable individuals in these circumstances.

(ii) Personal data relating to officials requiring hotel accommodation whilst carrying out their official role as Welsh Government employees

26. The Commissioner notes that the Welsh Government has confirmed that each of the employees whose name is being withheld under this category are, or were senior civil servants. It has further acknowledged the general position that the more senior a public official is, the less likely it would not be 'fair' to release their personal data. However, it has further stated that the hotel was booked as part of a visit organised by officials in the Welsh Government's Tokyo office, rather than the officials named on the receipts, that the bookings were made in line with its internal process for hotel bookings, and the hotel was booked in close proximity to its Tokyo office.

27. Having considered the above arguments, the Commissioner is mindful that even though the officials are senior civil servants, that they would reasonably expect that this information was not disclosed.

Consequences of disclosure –

28. The Commissioner's guidance regarding the disclosure of information about employees states that:

"Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may regard the disclosure of personal information about them as an intrusion into

their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life."

29. The Welsh Government has outlined the background to the request in that it appears to have been prompted by a media story about the "Welsh Government's 'eye-watering' £7.5m credit card bill" with the implication in the article that the purchases were in some way irregular. In support of this it has referred to comments from the Welsh Conservative Shadow Cabinet Secretary for Finance stating that:

"the number of staff with access to them continues to grow and some of the claims involved are eye-watering and require explanation".

30. The Welsh Government has further stated that all of the individuals concerned are likely to feel embarrassed given the tone of the media article and considers disclosure could lead to possible vilification and potential persecution, further informing the Commissioner that the media story generated 45 comments, most of which were hostile, with some calling for "greedy people" to be 'sacked'.
31. The Welsh Government has further stated that releasing the names of the individuals who hold procurements cards although remote, could present an ongoing risk to their personal safety in that it could increase the risks of them being singled out for theft or robbery due to the perceived value of the Government procurement card.
32. The Commissioner has considered the arguments presented by the Welsh Government and accepts that embarrassment and possible vilification of the individuals in question may result from disclosure of their names. However, whilst she does not consider that embarrassment per se is sufficient reason to justify withholding their names, she considers that the disclosure of the information is likely to result in an unjustified level of distress to these individuals.
33. She is not, however, persuaded by the Welsh Government's arguments in respect of an on-going risk to their personal safety as she considers the likelihood of this is so remote to be almost negligible.

The legitimate public interest in disclosure

34. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
35. The Welsh Government has acknowledged the public interest in disclosure of information surrounding the expenditure of public money,

however it considers that this has been served by the information already in the public domain both by the release of information that generated the original media article, and in the context of the further information which has been issued to the complainant. It has further stated that it cannot see what further public interest would be satisfied by the release of the names of those who administered the transactions.

36. The Commissioner acknowledges that the complainant is interested in obtaining this information. She also notes the general legitimate public interest in the disclosure of details of public expenditure, particularly in relation to senior civil servants. However, in weighing up the balance the Commissioner considers that the reasonable expectations of the data subjects combined with the consequences of disclosure are stronger than any legitimate public interest in disclosure. Consequently, she is satisfied that the Welsh Government appropriately withheld the disputed information on the basis of section 40(2) of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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

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