

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2024

Public Authority: Welsh Government
Address: Cathays Park
Cardiff
CF10 3NQ

Decision (including any steps ordered)

1. The complainant has requested information regarding a member of staff of the Welsh Government. The Welsh Government informed the Commissioner it was relying on section 21 (Information accessible to applicant by other means) of FOIA to refuse to provide the requested information.
2. The Commissioner's decision is that the Welsh Government was entitled to rely on section 21.
3. The Commissioner does not require further steps.

Request and response

4. On 12 May 2024, the complainant wrote to the Welsh Government and requested information in the following terms:

"The attached minutes of WITS [Wales Interpretation and Translation Service] were obtained from Cardiff Council under the Freedom of Information Act. In the minutes it is stated that [name redacted] of the Welsh Government attended and spoke at the meeting. I would be grateful if you would let me know the full name of [name redacted], his rank, and his role at the meeting. Could you also let me know what expertise and knowledge [name redacted] has of Sign Language and the Deaf community."

5. The Welsh Government responded on 29 May 2024. It disclosed the grade and role of the staff member and advised that it did not hold information about their expertise and knowledge of Sign Language and the Deaf community. It said their name was exempt from disclosure under section 40(2) (Personal information) of FOIA.
6. The complainant requested an internal review on 29 May 2024. They quoted the name of the staff member and asked the Welsh Government to review its refusal to disclose it, which they said was "required by law".
7. The Welsh Government provided the outcome of the internal review on 18 June 2024. It maintained its decision to apply section 40(2) to withhold the name.

Scope of the case

8. The complainant contacted the Commissioner on 3 July 2024 to complain about the way their request for information had been handled.
9. During the Commissioner's investigation, the complainant informed the Commissioner that the name of the member of staff (which they had cited in their internal review request) had been disclosed to them by another public authority.
10. As a result of this, the Welsh Government revised its position on the request. It explained to the Commissioner that, as the complainant clearly had access to the requested information, it was withdrawing section 40(2) and relying instead on section 21 of FOIA to withhold the information.
11. As it was clear that the complainant had the requested information in their possession, the Commissioner invited them to withdraw their complaint. The complainant declined, and asked the Commissioner to decide whether the Welsh Government should have disclosed the name of the staff member in response to their request.
12. The Commissioner therefore considers that the scope of his investigation is to determine whether the Welsh Government was entitled to rely on section 21 of FOIA.

Reasons for decision

Section 21 – information accessible to the applicant by other means

13. Under section 21, information is exempt from disclosure if it is accessible to the applicant by other means (ie other than through a request for information under section 1 of FOIA).
14. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
15. Unlike most exemptions, the circumstances of the applicant must be considered, as the information must be reasonably accessible to them. A public authority must consider if the applicant can actually and reasonably access the information they requested.
16. The Welsh Government advised the Commissioner that as the complainant had received the requested information from a different public authority, it was exempt under section 21, by virtue of being accessible to them.

The Commissioner's decision

17. As the complainant has confirmed that they already had the requested information in their possession at the time the Welsh Government was considering the request, the Commissioner is satisfied that the information was reasonably accessible to them. The Commissioner has determined that the Welsh Government was entitled to rely on section 21 of FOIA to refuse to disclose the requested information and he does not require any further action.

Right of appeal

18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
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Cheshire
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