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Foreign &
Commonwealth
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25 January 2010

Mr Alun Williams /Dyn o Gaerdydd

<mailto:request-14603-cf7ddfa6@whatdotheyknow.com>

**Information Rights Team
Information Management
Group
Old Admiralty Building
London
SW1A 2PA**

Tel: 020 7008 0123

Fax: 020 7008 1114

E-mail: Dp-foi.img@fco.gov.uk

Dear Mr Williams,

Freedom Of Information Request Reference: 0549-09

I apologise for the time it has taken to respond to your request and can only offer our sincere apologies for this delay. I am writing to confirm that the Foreign and Commonwealth Office has now completed its search for the information which you requested on 13 July 2009. In that request, you asked us for documents (Meeting minutes, email discussion and memorandums) by officials discussing the Welsh Language Act 1993, and the decision not to comply with the law.

A copy of the information releasable to you is enclosed.

Some of the information held is exemption under Section 28 (Relations within the UK), Section 40 (Personal Information), Section 42 (Legal Professional Privilege of the FOI Act). This exemption requires the public interest test to be applied.

A small amount of information has been withheld under exemption s28 (2) as the information is exempt information if it would or would be likely to prejudice relations between any administration in the United Kingdom. Section 28 requires the public interest test to be applied.

We recognized there is a public interest in how different government administrations work with each other in promoting their interests. However, officials need to be able to maintain trust and confidence between administrations. This relationship of trust allows administrations to share information and provide for the free and frank advice on the understanding that it will be treated in confidence. Much of the work carried out with other administrations involves promoting and developing UK and overseas services/projects, in which the administration may require assistance. We would not wish to prejudice our current and future relations with these departments, in this particular case the National Welsh Office. For this reasons we believe the public interest is best served in withholding the information falling under this exemption.



Some of the information you have requested, is personal data relating to third parties, the disclosure of which would contravene one of the data protection principles. In such circumstances sections 40(2) and (3) of the Freedom of Information Act apply. In this case, our view is that disclosure would breach the first data protection principle. This states that personal data should be processed fairly and lawfully. It is the fairness aspect of this principle which, in our view, would be breached by disclosure. In such circumstances s.40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

In addition, one piece of information has been exempt under section 42(1). Section 42(1) of the Act recognises the validity of withholding information that is subject to LPP, which exists in order to encourage clients to be frank and open with their legal adviser, secure in the knowledge that those communications will not be disclosed without their consent. It is important that the government is able to seek legal advice so that it can make its decisions in the correct legal context. The legal adviser must be in possession of all material facts in order to provide sound advice. The government must, therefore, feel confident that it can disclose *all* relevant facts to its legal adviser. It must be able to do so without fearing that this information will be disclosed to the public. In turn the legal adviser will consider the issues and the arguments and weigh up their relative merit.

Transparency of decision making and knowing that decisions are taken in the correct legal context are two reasons why it might be argued that information subject to section 42(1) should be disclosed. However, the process of providing legal advice relies for its effectiveness on each side being open and candid with the other. Such candour is ensured by the operation of LPP. The importance of this principle was most recently debated and reinforced in the House of Lords in *Three Rivers District Council and BCCI v The Governor and Company of the Bank of England* [2002] EWHC 2730. For these reasons, I consider that the public interest in maintaining LPP under section 42(1) outweighed the arguments in favour of disclosure at the time the FCO replied and that this is still the case now.

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In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless exempt. The information we have supplied to you may now be published on our website together with any related information that will provide a key to its wider context.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request an review of our decision, you should write to the Information Rights Team. Please note any request for an internal review must be submitted within 40 working days from the date our response was issued.

If you are not content with the outcome your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Foreign and Commonwealth Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF.

Yours sincerely,

The Information Rights Team

Information Management Group