



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

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# Freedom of Information Act 2000 The Welsh Language Commissioner's Policy

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# 1 Purpose

- 1.1 This policy outlines the arrangements put in place by the Welsh Language Commissioner to ensure compliance with the Freedom of Information Act 2000. It also includes details about how to make a request under the Act.

## 2 Policy statement

- 2.1 The Freedom of Information Act 2000 provides a general right of access to all kinds of 'recorded' information which is held by public authorities or on behalf of public authorities, subject to some exemptions, and places a number of duties on public authorities. The exemptions are intended to protect confidential information or other information where its disclosure could impair the Commissioner's capacity to undertake its statutory functions or those of third parties.
- 2.2 The Welsh Language Commissioner's publication scheme has been developed by using the Information Commissioner's good practice model and it is updated regularly, for example when new information is published or when information is reviewed.
- 2.3 The Act helps improve people's understanding of how public bodies undertake their duties, make decisions and spend public money. Recorded information includes paper-based information, electronic information and audio or visual tape information.

### Scope of the Policy

- 2.4 The Welsh Language Commissioner has undertaken to comply with the Freedom of Information Act 2000 in full, and the main aspects impacting the Commissioner's procedures are:
  - Facilitating a general right of access to information held by the Commissioner on functions and expenditure, subject to certain conditions and exemptions;
  - In terms of the majority of exempt information, its information must, nevertheless, be disclosed unless the public interest in keeping the exemption outweighs the public interest in disclosing the information; and
  - Adopting a scheme for publishing information. The scheme determines the categories of information which the Welsh Language Commissioner plans on publishing, the publishing approach and whether the information is available to the public for free or for a fee.

### Responsibilities

- 2.5 The Welsh Language Commissioner, as Accounting Officer, is accountable and responsible for Information Governance, and is ultimately responsible for determining policies which are relevant to information held by the Commissioner. The Accounting Officer provides assurance, through the annual Governance Statement, that all risks to the Commissioner, including risks relating to information, are controlled and mitigated effectively.

- 2.6 The Directors are responsible for ensuring that information which falls under the scope of their responsibility fully complies with those policies and procedures determined by the Welsh Language Commissioner, including information processed by contractors, partners or other authorities working under any agreement with the Commissioner.
- 2.7 The Senior Officers are responsible for processing information according to information governance policies, procedures, guidance and the general framework determined by the Welsh Language Commissioner.
- 2.8 All officers are responsible for processing information according to information governance policies, procedures, guidance and the general framework determined by the Welsh Language Commissioner.
- 2.9 The Senior Governance Officer is responsible for administering all requests for access to information received by the Commissioner. The officer also provides a contact point for all the Commissioner's officers seeking advice on freedom of information issues.

### **Training**

- 2.10 The Commissioner will ensure that all officers receive training which is appropriate to their responsibilities under this policy along with its related procedures and guidance. All written correspondence (by post or electronically) that comes to a public authority is within the scope of the Freedom of Information Act if that correspondence is seeking information, and that correspondence must be dealt with in accordance with the provisions of the Act. It is therefore essential that all officers are familiar with the provisions of the Freedom of Information Act, the Freedom of Information Act's Code of Practice and any relevant guidance on good practice published by the Information Commissioner.

### **Monitoring, review and reaching a decision**

- 2.11 The Commissioner keeps a record of every request for information made under the Freedom of Information Act and the steps taken in relation to each request for a certain period.
- 2.12 The Commissioner has procedures in place for undertaking systematic reviews of its arrangements which include examining its compliance with the Freedom of Information Act.
- 2.13 The Commissioner records every complaint made regarding its freedom of information arrangements and will ensure that any lessons learned following any such complaints are used to improve its policies and procedures.
- 2.14 This policy will be reviewed every two years<sup>1</sup> in order to ensure that it remains current, effective and considers any emerging good practice. Where new legal directives come into force, the policy will be reviewed in accordance with the start date of that legislation.

### **Complaints or enquiries**

- 2.15 Should you have a complaint about the way in which the Commissioner has responded to a request for information under the Freedom of Information Act, you should ask the Commissioner to review its decision. A review will be held within 20

working days of receiving an appeal.

- 2.16 For further information, please refer to the Complaints Procedure for Actions or Omissions in relation to exercising the Commissioner's Functions. The review will be undertaken by the Commissioner's appropriate officers. Should you remain dissatisfied, you may raise the matter with the Information Commissioner's Office.

## 3 Key facts about compliance

### Legal context

- 3.1 The Freedom of Information Act (2000), Environmental Information Regulations (2004), Data Protection Legislation and Welsh Language (Wales) Measure 2011 provide the legal context for the way in which the Commissioner manages information.
- Freedom of Information Act (2000) and Environmental Information Regulations (2004) - The Freedom of Information Act provides that the Commissioner (and all public authorities) will ensure that information is available to the public on our work and how we spend public money. The Environmental Information Regulations work in a similar way to the Freedom of Information Act and involve information held by public authorities on the natural or built environment.
  - Data Protection Legislation (UK GDPR and Data Protection Act 2018) - The legislation is relevant to information held on individuals and provides a framework for dealing with personal information.
  - Welsh Language (Wales) Measure 2011 - Section 22 of the Measure *Power to Disclose Information* is relevant to information obtained by the Commissioner in the exercise of its functions. It provides a wide portal for receiving information and a narrow portal for disclosure. However, these provisions do not exempt the Commissioner from undertaking its duties as required by the Data Protection legislation.

### Freedom of Information Act Definitions

#### Schedules

- 3.1.1 Like all public authorities, the Commissioner must inform those making a request in writing whether it holds the information requested and, if so, subject to exemptions, provide that information in an accessible and timely manner within 20 working days of receiving the request.
- 3.1.2 The following would be exceptions to this:
- if the Commissioner has to transfer the request to another authority as the Commissioner does not hold the information and, as a result, the 20 day time limit commences when the transfer is received;
  - if the Commissioner has to apply an exemption which asks for a public interest test, which allows the time limit to be extended;
  - if a fee is payable, and therefore, the 20 days do not commence until the Commissioner has received the funds and it has cleared; or
  - if the request is unclear therefore the 20 days do not commence until the Commissioner has received clarification regarding the request by those

submitting it.

### Exemptions and public interest test

- 3.1.3 Freedom of Information Act 2000 and the Environmental Information Regulations provide rights of public access to information held by public authorities. The Freedom of Information Act has a number of exemptions which allow public authorities to withhold some information requested, or all the information, when there are legitimate reasons for doing so.
- 3.1.4 A public interest test favours disclosure where a qualified exemption is relevant. In such cases, the information may be withheld only if the public authority believes that the public interest from withholding it outweighs the public interest from its disclosure. Guidance from the Information Commissioner's Office explains how and when to apply a public interest test.
- 3.1.5 Absolute Exemptions - if an absolute exemption is relevant, information does not have to be disclosed under the Freedom of Information Act and a public interest test is not relevant.<sup>2</sup>
- Section 21 – Information accessible to applicant by other means
  - Section 40(1) – Personal information (of which the applicant is the data subject)
  - Section 41 – Information provided in confidence
  - Section 44 – Prohibitions on disclosure
- 3.1.6 Qualified Exemptions - even if one of the following exemptions is relevant, the information must be disclosed unless the public interest following its disclosure outweighs the public interest from its release.<sup>3</sup>
- Section 22 – Information intended for future publication
  - Section 30 – Investigations
  - Section 31 – Law enforcement
  - Section 33 – Audit Functions
  - Section 36 – Effective conduct of public affairs
  - Section 39 – Environmental information accessible by means of the Environmental Information Regulations
  - Section 40 (2) – Personal data (where the data relates to a third party) where its disclosure would contravene any of the Data Protection Principles
  - Section 42 – Legal professional privilege
  - Section 43 – Commercial interests

### Fees

- 3.1.7 The Commissioner will pay the majority of costs relating to compliance with information requests. However, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) allow the Commissioner to refuse requests for information where the cost of compliance would exceed the 'appropriate limit', as prescribed in the Regulations.
- 3.1.8 The Commissioner will charge fees in accordance with the Regulations. In estimating the cost of compliance with information requests, the Commissioner will consider the time spent by officers, which is subject to a fee of £25 p/h, involved in the following activities:

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<sup>2</sup> These are the most common absolute exemptions – this list is not exhaustive and reference should be made to the legislation in order to see all the absolute exemptions

<sup>3</sup> These are the most common qualified exemptions – this list is not exhaustive and reference should be made to the legislation in order to see all the qualified exemptions

- determining whether the information is held;
- locating the information or documentation which may contain the information;
- retrieving the information or documentation which may contain the information; and
- extracting the information from a document.

3.1.9 Where it is estimated that the cost of compliance with a written request for information falls below £450 ("appropriate limit"), no fee is charged; however, the Commissioner may charge a fee for costs involved in reproducing information, postage and other kinds of information transfer. Under all circumstances where the Commissioner chooses to charge a fee for information published through its publication scheme or charges a fee resulting from a request for information, a fee notice will be provided to the applicant in accordance with the requirement of section 9 of the Act. Applicants will be required to pay any fees within 3 months which commences on the day on which the fee notice is provided.

3.1.10 Should the estimated cost of compliance with a request for information exceed £450 (the "appropriate limit") there is no obligation on the Commissioner to respond to the request. In such cases, the Commissioner will hold a discussion with the applicant regarding whether they wish to modify the request in order to reduce the cost.

3.1.11 If the Commissioner receives two or more related requests within 60 working days in succession, either from an individual or two or more individuals who appear to be working together or on a campaign trail, compliance costs relating to the requests will be consolidated. Should the estimated cost of compliance with the requests be added together and total more than £450, there will be no obligation on the Commissioner to comply with any such requests.

3.1.12 In general, the Commissioner will not provide information in response to a request where the cost exceeds £450. If the Commissioner decides to comply with such a request, in exceptional circumstances, it may charge a fee for the estimated time spent by officers retrieving and collating information, namely £25 p/h, along with the costs of informing applicants as to whether the Commissioner holds the information and the costs of transferring that information to them. This fee is subject to VAT where normal rates apply.

3.1.13 If the request for information is mixed, i.e. it includes a request for personal information and/or environmental information the request will be divided according to its constituent parts. The fee for environmental information will be charged according to the terms of the Environmental Information Regulations.

### Requesting information

3.1.14 The request must comply as follows:

- be written (an email and fax are acceptable);
- provide the name of the applicant;
- provide a correspondence address; and
- provide a clear description of the information requested.

3.1.15 It would help the Commissioner to respond to your request in the most effective

manner if you submitted your request in one of the following ways:

- via email for the attention of the Senior Governance Officer to: [post@cyg-wlc.wales](mailto:post@cyg-wlc.wales) ; or
- by post to:  
Senior Governance Officer  
Welsh Language Commissioner  
Market Chambers  
5-7 St Mary Street  
Cardiff  
CF10 1AT

3.1.16 If you are submitting a request for information through the website WhatDoTheyKnow.com or the Commissioner's social media account your request will need to satisfy the requirements of 3.1.14 above. If your real name does not appear in your request / profile the Commissioner will contact you to provide advice and assistance on how to resubmit your request in order to satisfy the Freedom of Information Act's requirements.

## 4 The Welsh Language Commissioner's other information governance policies

### Privacy Notice

- 4.1 The Commissioner's privacy notice lets you know what to expect when the Commissioner collects personal information. It is relevant to information held on:
- individuals in relation to the provision of services by the Commissioner;
  - people who use the Commissioner's services;
  - visitors to the Commissioner's website;
  - individuals employed by the Commissioner; and
  - individuals used by the Commissioner under contract or agreement.

### Information Retention and Disposal Policy

- 4.2 The Commissioner's Information Retention and Disposal Policy determines for how long records need to be kept and the steps that should be taken when it has no further use.

### The Welsh Language Commissioner's publication scheme

- 4.3 The Welsh Language Commissioner's publication scheme explains what information on the Commissioner and its work is released to the public as a matter of course.