



Covid pass vote – 5 October 2021

17 December 2021

Request for Information.

Thank you for your request received on 14 October in which you asked:

I would like to request the following information under the freedom of information act:

- 1. Correspondence between Commission staff and Gareth Davies (MS for the Vale of Clwyd) concerning the vote held on October 5th to introduce covid passes in Wales*
- 2. Correspondence between Commission staff discussing the vote held on October 5th to introduce covid passes in Wales*
- 3. Correspondence between Commission staff and the Presiding Office discussing the vote held on October 5th to introduce covid passes in Wales*

I would appreciate any correspondence in Welsh or English that meets the above requirements and was sent between October 4th and October 14th, 2021.

I am now in a position to respond to your request. My apologies for the delay in returning to you.

- 1. Correspondence between Commission staff and Gareth Davies (MS for the Vale of Clwyd) concerning the vote held on October 5th to introduce covid passes in Wales*

We hold no recorded information relating to your request.

Senedd Cymru
Bae Caerdydd
Caerdydd, CF99 1SN

Welsh Parliament
Cardiff Bay
Cardiff, CF99 1SN
Ffôn/Tel: 0300 200 6224

E-bost/Email: Ceisiadau-gwybodaeth@senedd.cymru
Information-request@senedd.wales

2. Correspondence between Commission staff discussing the vote held on October 5th to introduce covid passes in Wales

I can confirm that we hold information in relation to this part of your request. Please find attached a separate document containing some of the information held. However, some of the information included in this document has been redacted because it contains personal data that is exempt from disclosure under the 'personal information' exemption in section 40(2) of the Freedom of Information Act 2000 (FOIA). This exemption applies where the requested information constitutes personal data and disclosure would contravene one or more of the data protection principles set out in the United Kingdom General Data Protection Regulation (UK GDPR). Please see [Annex A](#) to this letter for further information.

Some information has also been withheld on the basis that it is exempt from disclosure under section 36(2)(b)(i) and (ii), and (c), of FOIA. Further information in relation to section 36 is provided below.

3. Correspondence between Commission staff and the Presiding Office discussing the vote held on October 5th to introduce covid passes in Wales

I can confirm that we hold information in relation to this part of your request. However, a disclosure will not be made because the information held is exempt from disclosure under Section 36(2)(b)(i) and (ii), and (c), of FOIA. Please see [Annex B](#) to this letter for further information.

Yours sincerely

Buddug Saer
Freedom of Information Manager
Welsh Parliament

Your request has been considered according to the principles set out in the **Code of Practice on Public Access to Information**. If you have any questions regarding this response please contact me. If you feel you have cause for complaint, please follow the guidance below.

Cause for concern or complaint with your FOI response?

If you are dissatisfied with the Welsh Parliament's handling of your request, you can request an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Freedom of Information Manager at:

Information-request@senedd.wales or in writing to

Welsh Parliament
Governance and Assurance
Cardiff Bay
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CF99 1SN

Annex A

Section 40 FOIA: disclosure of personal data would be in breach of the UK GDPR

The definition of personal data is set out in Article 4 of the UK GDPR, being:

“any information relating to an identified or identifiable person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.

The emails and Microsoft Teams chats captured by your request contains the names, email addresses and telephone numbers of Senedd Commission (“the Commission”) employees.

Personal information is exempt from disclosure under section 40(2) and section 40(3A)(a) of the FOIA where disclosure would contravene one or more of the data protection principles set out in the UK GDPR. The principle relevant on this occasion is the first data protection principle.

The first data protection principle, as set out in Article 5 of the UK GDPR, states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’).”

In addressing whether disclosure would be fair, we have considered the consequences of disclosure, the reasonable expectations of the persons concerned and the balance between their rights and any legitimate interest in disclosure. Our conclusion is that disclosure would be unfair.

The staff named in the information captured by this request do not carry an expectation of disclosure of their personal information. Unlike elected representatives, they do not undertake a public facing role and to disclose their personal information would create a disproportionate infringement on their individual interests, fundamental rights and freedoms as it would not add to the substance of our response. Where the public interest weighs more heavily in favour of disclosure, such as where senior Commission staff at Director level or above are named, that information is disclosed.

Notwithstanding my view as to fairness, I went on to consider Article 6 of the UK GDPR. None of the legal bases in Article 6 is relevant other than Article 6(1)(f), which allows the processing of personal data if:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”

This condition involves a three-part test:

- there must be a legitimate public interest in disclosing the information;
- the disclosure must be necessary to meet that public interest; and
- the disclosure must not override the interests, fundamental rights or freedoms of the data subjects.

We have given careful consideration to the relevant interests which include: the Commission’s obligations under the UK GDPR and the Data Protection Act 2018; your right to access this information; the individuals’ concerned and their right to privacy; and the public interest in this information being disclosed.

In our view, providing you with the personal information of Commission staff would not add to the substance of our response to your request. This, coupled with the fact that the roles of those staff are not public facing in nature nor are they at a sufficient level of seniority that weighs more heavily in favour of the disclosure of their personal information, leads us to conclude that does not appear to be a legitimate interest in disclosing the personal information of those Commission staff to you. The information provided in its redacted form is a balanced way of meeting the public interest, whilst ensuring the interests, fundamental rights or freedoms of individuals are not jeopardised.

Annex B

Section 36(2) FOIA

Section 36(2) of FOIA states as follows:

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

[...]

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

The Llywydd (Presiding Officer) of the Senedd is the “qualified person” for the purposes of section 36. She has considered the relevant information and has formed the opinion that disclosure of the requested information would have the effect listed above.

Section 36 is a ‘qualified exemption’. This means that a public interest test must be carried out. The purpose of this test is to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. There is always a public interest in transparency and accountability of the work of the Llywydd and the Senedd Commission. However, this must be weighed against the public interest in maintaining the exemption, in particular by ensuring that there is a ‘safe space’ within which views can be exchanged, and advice provided and considered. There is also a public interest in maintaining the ‘safe space’ for discussions to be had that ensure the effective operation of Senedd proceedings.

As such, I do not consider that the public interest in the disclosure of the information requested outweighs the likely harm which would follow from disclosure.

