



Senedd Reform

5 July 2023

Request for Information.

Thank you for your request received on 26 May in which you asked:

Please disclose a letter sent to the First Minister Mark Drakeford, and its annexes, about Senedd reform, referred to in these Commission draft minutes

<https://business.senedd.wales/ieListDocuments.aspx?CId=258&MId=13280&Ver=4>

Further to the extension of time applied to consider the public interest (communicated to you on 22 June), we are now in a position to respond in full to your request.

I can confirm that we hold the information requested. However, a disclosure will not be made because the information held is exempt from disclosure under sections 36(2)(b)(i) and 36(2)(c) of the Freedom of Information Act 2000 (FOIA).

Fuller details of the exemption applied, and the reasons for its application, is set out in the [annex](#) to this letter.

Yours sincerely

Buddug Saer

**Freedom of Information Manager
Welsh Parliament**

Senedd Cymru
Bae Caerdydd
Caerdydd, CF99 1SN

Welsh Parliament
Cardiff Bay
Cardiff, CF99 1SN
Ffôn/Tel: 0300 200 6544

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

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
Cardiff
CF99 1SN

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

Annex

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

[...]

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

Section 36(2)(b)(i) and (2)(c) are available where, in the reasonable opinion of the qualified person, disclosure of the information would, or would be likely to, inhibit the free and frank provision of advice or otherwise prejudice the effective conduct of public affairs.

The Llywydd (or Presiding Officer) of the Senedd is the "qualified person" for the purposes of section 36 FOIA. She has considered the relevant information and has formed the opinion that disclosure of the requested information would have the above effects. A number of reasons underpin her opinion including those which follow below.

Section 36(2)(b)(i)

The letter was intended to be treated confidentially and seen only by a very limited number within the Commission and within the Welsh Government. A disclosure would have a 'chilling effect' on the Commission's ability to deliver advice in the future by inhibiting the way in which it is able to express its views and advice fully and with candour. The issue of Senedd reform is 'live' in that it is ongoing and key decisions have yet to be made. Given its early stages, it may well require the provision of further advice in the future. As such, it is critical that the private channel remain viable to support and facilitate the free flow of free and frank advice. Any hindrance to that free flow would diminish the quality of advice and have a corresponding effect on decision making.

Section 36(2)(c)

It is appropriate that the development of Senedd reform policy should take place within a private, confidential and secure channel i.e. within a 'safe space' away from external

challenge, disruption and distraction. Disclosure of the letter would impair that safe space in a number of ways, including the following.

As indicated above, key decisions are yet to be made; publication of information - before the introduction of the relevant draft legislation - could give a misleading view of Senedd reform proposals and create concerns, whether within the wider public or media. As a consequence, this would result in a diversion of resources within the Commission (and also potentially in Welsh Government too) by utilising resources to manage the effects of disclosure.

In due course, the Member in charge of the Bill to facilitate Senedd reform will be required to provide certain supporting material alongside the Bill. This material will set out the anticipated costs and upon whom they will fall. It is imperative that those elements are scrutinised as intended, both in terms of the timing of that scrutiny and the processes to be followed to achieve it. A disclosure at this stage would remove scrutiny from the established channels and have a detrimental effect on the democratic process.

The Commission has a statutory function to provide the Senedd with the services it requires to carry out its functions. Impairment of the private, safe channel would have an adverse effect on the ability of the Commission to provide an effective service to the Senedd thereby hindering its ability to fulfil its statutory function and purpose.

In addition, the letter was intended for limited circulation and was never intended for publication. Disclosure would remove from the Commission (and from Welsh Government) the intended confidentiality.

Further, Senedd reform requires effective cooperation between Welsh Government and the Commission, as one of the key stakeholders. Considerable efforts have been made by relevant parties to foster a relationship which is conducive to, and supports, that. Disclosure of the letter would have an injurious effect on the relationship which, in turn, may diminish the quality of draft legislation introduced into the Senedd.

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.

The qualified person's opinion brings weight in favour of maintaining the exemption. In this instance, the Llywydd has concluded that disclosure 'would' have the effects listed in subsections (2)(b)(i) and (2)(c). This carries significant weight; had the Llywydd concluded

that disclosure 'would be likely to' have those effects, the weight carried by that opinion would have been reduced (as this is a lower threshold).

A number of the reasons underpinning the Llywydd's opinion that the section 36 is engaged also weigh in favour of maintaining the exemption. It is in the public interest to ensure the Commission can continue to contribute fully to the issue of Senedd reform by preserving the integrity of a safe space which supports its ability to explore issues and options, formulate advice, and ensures decisions can be made optimally. It is also in the public interest to ensure the Commission can contribute fully in the future to the issue of Senedd reform by safeguarding its ability to provide advice freely. Preventing a chilling effect by ensuring the Commission can continue to contribute fully to the issue of Senedd reform is vital. It is also in the public interest to prevent a chilling effect on the Commission's general future willingness to provide advice to others. Both 'chilling effect' and 'safe space' arguments are strongest when issues are 'live'; this is undoubtedly the case in relation to Senedd reform.

It is in the public interest to avoid the possibility of resources being diverted following an untimely disclosure of information. In this regard, it is significant that the figures and calculations are, as a result of a number of key decisions having yet to be made, necessarily speculative in nature.

The costings associated with the model of Senedd reform that is ultimately taken forward by the Member in charge will be published, in due course, when its legislation is introduced to the Senedd. The published costs will receive scrutiny as part and parcel of the legislative process. It is in the public interest to preserve the integrity of the Senedd's legislative process by ensuring that scrutiny of draft legislation takes place at the appropriate time and within the appropriate channels

It is also in the public interest to ensure the confidentiality of exchanges between Welsh Government and its stakeholders (of which the Commission is one) as it develops its Senedd reform legislation. There is an inherent public interest in supporting confidentiality, when and where it is required.

Furthermore, it is in the public interest to avoid the potential for damage to the relationship between Welsh Government and the Commission. This is of particular significance given the nature and timing of the Senedd reform programme. It would be contrary to the public interest to take steps which would ameliorate this relationship.

Taken in the round, the above points underpin the Commission's capacity to fulfil its function and purpose. It would be contrary to the public interest to take any step which could have a negative effect on that.

However, there are, of course, arguments in favour of disclosure. There is an inherent public interest in transparency, openness and accountability of the work of the Llywydd and the Commission and, in particular, in terms of the way in which the Commission foresees changes being made in the context of Senedd reform and the potential cost of those.

There is also an inherent public interest in ensuring transparency, openness and accountability to promote and ensure the quality of decision-making in relation to the public sector more widely. In this instance, the advice contained in the letter is intended to inform (and thereby improve the quality of) Welsh Government decision making.

There is a particular public interest in Senedd reform given its magnitude in terms of its capacity to impact the lives of all those living in Wales.

Further, there is an inherent public interest in the making available of information that could inform debate in the arena of Senedd reform.

Whilst there are considerable factors in favour of disclosure, they are insufficient, on this occasion, to outweigh those in favour of maintaining the exemption. As such, in weighing all of the above, it is considered that the public interest weighs in favour of maintaining the exemption.