

We were asked:

Q1. I would like to make the following FOI request: I am applying for copies of policy papers, discussion papers, instruction papers and correspondence between the Wales Office, the National Assembly for Wales Commission and the Privy Council, regarding the National Assembly for Wales Commission (Crown Status) Order number 1118 (April 2007) and also the National Assembly for Wales Commission (Crown Status) (No.2) Order number 1353 (May 2007).

We replied:

A1. We have conducted a thorough search of our paper and electronic records and the Wales Office holds information relevant to your request. However, we have decided that the information is exempt under sections 21(1) (information accessible by other means) and 35(1)(a) (formulation of Government policy) of the FOIA.

We are not obliged to provide information if it is reasonably accessible to you by other means (section 21(1) of the FOIA). The terms of this exemption in the FOIA mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

In this case, the information relates to both the two Orders and the two Explanatory Memoranda accompanying them, which are available here:

<http://www.legislation.gov.uk/uksi/2007/1118/introduction/made>

<http://www.legislation.gov.uk/uksi/2007/1118/memorandum/contents>

<http://www.legislation.gov.uk/uksi/2007/1353/contents/made>

<http://www.legislation.gov.uk/uksi/2007/1353/memorandum/contents>

Additional information we hold is exempt by virtue of section 35(1)(a) of FOIA (formulation of government policy). We have given due consideration to whether the public interest in disclosing the information outweighs the public interest in withholding the information. In deciding whether to disclose the information which is exempt under section 35(1)(a), we have considered the following public interest reasons in favour of disclosing the information: there is a public interest in understanding the process by which the UK Government formulates policy on constitutional issues; greater transparency and openness can improve accountability and public trust; a greater understanding of the basis for Government decision-making enables the public to decide for itself whether appropriate factors and options have been considered during the formulation of policy; a better understanding of how the Government has arrived at its proposals could encourage a more informed contribution to the policy making process; and a more informed debate gives a wider number of people the opportunity to contribute to that debate and enhances trust in the quality of the decision making.

We balanced these arguments in favour of disclosure against the need to ensure close and effective working relationships between UK Government departments and others in the development of policy. In developing policy, Ministers and officials need to be able to have candid discussions about the various options and their implications. We believe that providing details of the options which were considered and the arguments which were made would risk the ability of the UK Government to work in an open and collaborative way now, and in the future. Releasing this information now may result in relevant parties in the future being inhibited from asking the necessary questions to ensure policy or legislation is appropriate and fit for purpose. Alternatively, they might be inhibited from adequately recording the details of discussions.

For these reasons, we have concluded in this case that the harm that would result from disclosure of the exempt