



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2017/0077

B E T W E E N:-

WELSH GOVERNMENT

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

BY CONSENT, IT IS HEREBY ORDERED:

1. This appeal is part allowed for the reasons set out in Annex A.
2. There be no order as to costs.

Judge Peter Lane

23 August 2017

Promulgation date: 25 August 2017

Annex A

Insofar as it is relevant to this appeal, in her decision notice FS50625427 (“the decision notice”), the Commissioner found that the Welsh Government was not entitled to rely on section 36(2)(c) in relation to the following specific numbered emails which fell within the scope of the request – 1; 6-8; 12; 14-18; 31-38; 44; 45 and 81.

The Welsh Government appealed to the First-tier Tribunal arguing that it was entitled to rely on section 36(2)(c) in relation to all of the above emails and that the public interest test favoured maintaining the exemption.

In considering her position for the purposes of responding to the appeal; the Commissioner now accepted that section 36(2)(c) was engaged in relation to all the relevant emails save for emails 18 and 81. The Commissioner also noted that email 45 was a duplicate of another email which had been withheld under section 36(2)(b). As such, email 45 was not considered further. However, the Commissioner invited further submissions on the public interest test in relation to those emails which she did now consider engaged section 36(2)(c).

The Welsh Government did not seek to challenge the Commissioner’s findings in relation to emails 18 and 81. Further, on reviewing its position on the public interest test and given the passage of time, the Welsh Government was now prepared to disclose all outstanding emails save for emails 1; 12 and 33. In relation to these three emails, the Welsh Government maintained that the public interest did not, either at the time of the request or at the time of writing, favour disclosure.

The Commissioner agreed that the public interest test favoured the non-disclosure of emails 12 and 33 in their entirety. The Commissioner also agreed that the public interest test favoured non-disclosure of some but not all of email 1. The Welsh Government has now indicated that it does not oppose the Commissioner’s findings in relation to email 1 and will disclose those extracts of that email as identified by the Commissioner in her submissions.