



Our Ref: ATISN 12142
17 April 2018

Dear ,

ATISN 12142 – Deloitte LLP reports on Health Boards

Thank you for your request which I received on 5 March regarding:

- The amount spent on commissioning Deloitte LLP to undertake financial governance reviews of the three health boards that are currently in targeted intervention
- The number of other organisations considered in the commissioning process
- Copies of the final reports

I apologise for the lateness of my reply.

Following the announcement in September 2016 that Abertawe Bro Morgannwg, Cardiff and Vale and Hywel Dda University Health Boards had been escalated to targeted intervention, officials commissioned Deloitte LLP, through a competitive process, to undertake financial governance reviews of these three organisations.

This work was commissioned through open competition using the Crown Commercial Services ConsultancyOne Framework. There were two other tenders for this work. The contract was awarded to Deloitte LLP as providing the most economically advantageous tender. The cost of the contract was in line with the maximum day rates published as part of the ConsultancyOne framework (RM1502, Lot 5.2). The cost of the three reports was £156,234 excluding VAT.

The reviews covered the governance processes these boards adopted for the development, delivery, performance management and reporting of their financial plans. The review teams engaged widely throughout each organisation, including board members, executive directors and operational management. Each organisation has a Board approved action plan to respond to the review's recommendations and progress on delivering these actions is monitored by the Boards, their Committees, and by officials through the intervention process. As an example, Hywel Dda University Health Board has recently published a progress report and I attach the link for your information

<http://www.wales.nhs.uk/sitesplus/documents/862/ARAC%20Item%202.7%20External%20Governance%20Review.pdf>

Due to the size of the documents, the 3 financial governance reports have been sent to you in hard copy. I have decided that some of the information contained in these reports is exempt from disclosure under section 40 of the Freedom of Information Act and is therefore redacted from the documents. The reasons for applying this exemption are set out in full in annex A.

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

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or email: FreedomOfInformationOfficer@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

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

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,

Annex A - Section 40(2)

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

We have concluded that, in this instance, the information requested contains third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that some parts of these reports clearly falls within the description of personal data as defined by the DPA and that its disclosure of these parts would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *If disclosure would not be fair, then the information is exempt from disclosure.*

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

Our analysis of the ICO’s key considerations in assessing ‘fairness’, as set out in the Guidance, are presented below.

The withheld information amounts to the personal data of members of Health Board staff from each organisation and of varying seniority and also Independent Members of the respective Boards. In this context, those commenting as part of the information gathering exercise conducted in relation to the report, were told that that they would not be identified and the comments they made would not be directly attributable. Therefore it is reasonable to conclude that they would have no expectation that the information they provided would be placed in the public domain. In relation to comments on performance of individuals either presently or previously in the particular roles within the organisations, it is also reasonable that those who are being assessed either as effective or otherwise would not expect this information to be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public having access to this information. Because of this, it is my view that the release of such information would be unfair and so breach the first data protection principle. For that reason, I believe the information should be withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.