Dear,

ATISN 12617– Brexit and NHS Wales

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 11 September. You asked for the following written information:

1. Any written assessment of the effects of leaving
   (a) European Union
   (b) the European Medicines Agency
   (c) Euratom on
       (i) the Welsh NHS
       (ii) the Welsh NHS workforce
       (iii) Welsh patient access to medicines and treatments;

2. Written records of any communications within the last six months between Health and Social Care Directorate and
   (a) the Strategy and Constitution Directorate
   (b) any NHS Welsh Board
   (c) any other Directorate of the Welsh Government
   (d) any Ministry of the UK Government
   (e) the UK Permanent Representation to the EU on the impact of leaving the European Union on the NHS workforce;

3. Any written impact assessment, assessment, situation analysis, risk register or similar document produced by
   (a) the UK Government
   (b) the Welsh Government (including the Directorate)
   (c) a third party on the effects of leaving the European Union on the NHS workforce;

4. Information on the number of NHS Welsh staff who are
   (a) are non-UK citizens
   (b) are non-UK EU citizens
(c) are non-UK non-EU citizens and how many staff have left since the Brexit referendum?

Some of the information you have requested is exempt under section 21 of the Freedom of Information Act because it is reasonably accessible to you within the public domain. Section 21 (1) of the FOI Act exempts disclosure of information that is reasonably accessible by other means. This is as follows:

NHS Confederation Europe

Royal College of Nursing
https://www.rcn.org.uk/professional-development/publications/pub-007181

WA EAALC

NHS Employers

British Medical Association

RCP
https://www.rcplondon.ac.uk/projects/outputs/brexit-faqs

Kings Fund
https://www.kingsfund.org.uk/publications/articles/brexit-implications-health-social-care

Some information contained within the Annexes is exempt under Section 40(2) of the Freedom of Information Act (FOIA) which sets out an exemption from the right to know if the information requested is personal information of someone other than the requester and is protected by the Data Protection Act 2018 (DPA).

Personal data is defined in Section 3(2) of the DPA as:

“Personal data” means any information relating to an identified or identifiable Living individual

We have concluded that, in this instance, the information on the personal details of officials’ amounts to the personal data of others than the person submitting the request.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the General Data Protection Regulations (GDPR). We consider the principle being most relevant in this instance as being the first.

The first GDPR principle.
This states:

\textit{that personal data shall be:}

\begin{itemize}
  \item a) processed lawfully, fairly and in a transparent manner in relation to individuals;
\end{itemize}

We consider that the information highlighted falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle.

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.4) states:

\begin{quote}
If disclosure would not be fair, then the information is exempt from disclosure.
\end{quote}

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:

\begin{quote}
“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. (paragraph 63).
\end{quote}

In this instance, we believe the data subjects have no expectation that their personal information would be made public.

Thus, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

The remaining information held by the Welsh Government that falls within scope of the above request is attached at annexes 2-5. You may also wish to refer to our Disclosure Log for additional information that is related to your request.

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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: Freedom.ofinformation@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