

Dear ,

### **ATISN-12664: Request for Information**

Thank you for your request for information which we received on 13 September 2018.

You asked for:

***In November 2017 The Minister for Children & Social Care had responded to a letter regarding concerns about Adult Services in Powys. In this reply to me she makes reference to her asking 'you' to consider the observations made.***

***Please provide the audit trail of communication on this matter including letters, email, diary entries & telephone conversation memorandums to and from all those you have included in your activity dealing with this matter. I am particularly requiring detailed communication with the specific members of Powys County Council with responsibility for Adult Services.***

We have carried out a search of our records to identify the information that we hold in respect of the above. Copies of this information are enclosed and are listed below.

1. Email trail dated 03/01/2018 to 04/01/2018 between CIW officers
2. Email dated 04/01/2018 from CIW to Powys Council
3. File note dated 08/01/2018 regarding a telephone conversation with Powys Council
4. Email dated 08/02/2018 from CIW to Powys Council

Arolygiaeth Gofal Cymru (AGC)  
Swyddfa Merthyr Tudful  
Llywodraeth Cymru  
Adeiladau'r Llywodraeth  
Parc Busnes Rhydycar  
Merthyr Tudful  
CF48 1UZ  
[www.arolygiaethgofal.cymru](http://www.arolygiaethgofal.cymru)

☎ 0300 790 0126  
☎ 0872 437 7302  
✉ [ciw@gov.wales](mailto:ciw@gov.wales)

Care Inspectorate Wales (CIW)  
Merthyr Tydfil Office  
Welsh Government  
Government Buildings  
Rhydycar Business Park  
Merthyr Tydfil  
CF48 1UZ  
[www.careinspectorate.wales](http://www.careinspectorate.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We have decided that some of the information contained within these records is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at Annex 1 to this letter.

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](mailto: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

## Annex 1

### Request for Information ref: ATISN - 12664

We have decided to withhold the following information:

Information being withheld	Section number and exemption name
Names of individuals contained within the records.	Section 40(2) of the Freedom of Information Act. Personal data protected by the Data Protection Act 2018 (DPA).
Personal information about third party individuals contained within the correspondence records.	Section 40(2) of the Freedom of Information Act. Personal data protected by the Data Protection Act 2018 (DPA).

This Annex sets out the reasons for the engagement of Section 40(2) of the Freedom of Information Act.

Section 40(2) of the Freedom of Information Act (FOIA) 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 detailed above amounts to the personal data of others than the person submitting the request, or amounts to information which would likely identify third party individuals about whom the information relates.

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:

*.....that personal data shall be:*

*a) processed lawfully, fairly and in a transparent manner in relation to individuals;*

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:

*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. (paragraph 63).*

In this instance, we believe that disclosure of personal information relating to a third party without their knowledge or consent would be unfair and so breach the first data protection principle. We also believe that even with names redacted, the individuals about whom this information relates would likely still be identifiable.

For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act and has therefore been redacted from the enclosed documents. This is an absolute exemption and not subject to the public interest test.