

By Email:

18 June 2020

Dear

Reference: ATISN 14005

Further to your request for information which I received on 26 May 2020, please find the response below.

Pursuant to the Freedom of Information Act 2000, we request you to send us copies of unpublished Mental Health Act monitoring reports and any other inspection reports you hold for:

*North Wales Forensic Psychiatric Service
Ty Llywelyn
Bryn y Neuadd Hospital
LLANFAIRFECHAN
CONWY
LL33 0HH*

Please find enclosed three copies of unpublished Mental Health reports in respect of Ty Llywelyn in Bryn y Neuadd Hospital. You can find all other published reports on our website at:

<https://hiw.org.uk/bryn-y-neuadd-hospital>

You may wish to note that we published a report on Ty Llywelyn on 16 June 2020.

Healthcare Inspectorate Wales (HIW) has decided to withhold the following information:

Information being withheld	Section number and exemption name
Information relating to safety concerns of patients, staff and visitors.	Section 38(1) of the Freedom of Information Act. Health and Safety.
Third party personal data in the form of names and other information relating to	Section 40(2) of the Freedom of Information Act. Personal data protected

Gwirio bod pobl yng Nghymru
yn derbyn gofal da

Checking people in Wales are
receiving good care

Healthcare Inspectorate Wales staff, and staff and patients at Ty Llywelyn.	by the General Data Protection Regulation and Data Protection Act 2018.
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Further details can be found in Annex A.

HIW operates within the Welsh Government's framework for handling Freedom of Information requests. 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

Enclosure:

1. Document 1 – Inspection Report, Ty Llywelyn, May 2010
2. Document 2A – Inspection Report, Ty Llywelyn, May 2013
3. Document 2B – Action Plan, Ty Llywelyn, May 2013

Annex A

This Annex sets out the reasons for the use of Sections 38 and 40(2) of the Freedom of Information Act (FOIA).

Section 38(1) – Health and Safety

Section 38 provides an exemption from disclosing information if it would endanger any individual. This exemption states:

Information is exempt information if its disclosure under this Act would, or would be likely to (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual.

The Welsh Government believes the disclosure of information used to illustrate the reasons for our recommendations is exempt under section 38(1)(a). For the information to be exempt the Welsh Government must demonstrate there is a causal link between endangerment and disclosure of the information. The Welsh Government must also show disclosure would or would be likely to have a detrimental effect on the physical or mental health of any individual. This effect must be more than trivial or insignificant.

Section 38 is a qualified exemption. This means even if the information requested is exempt from disclosure, we must go on to consider and decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure. For section 38 this involves weighing up the risks to the health and safety of an individual or group against the public interest in disclosure in all circumstances of the case.

The Welsh Government recognises there is a public interest in the disclosure of any information which shows health care is meeting required standards.

Disclosing this information would not be in the best interest of the public due to the risk to patient, staff and visitor safety.

On balance the Welsh Government believes lies in favour of withholding this information.

Section 40(2) – Personal Information

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (DPA 2018) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

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 Regulation (GDPR). We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

We accept you have a personal interest in obtaining this information. However, we do not believe there is a legitimate interest in the disclosure of personal data contained within it.

2. Is disclosure necessary?

We do not believe disclosure of third party personal data is necessary in this case as the information requested was for monitoring and inspection reports for North Wales Forensic Psychiatric Service, therefore the names of individuals within that organisation, or in HIW, are not relevant.

3. The balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms

Our view is that releasing the information, with the redaction of third party personal data, achieves an appropriate balance between the legitimate interest in its content with the fundamental rights and freedoms of the data subjects.

Further, even if release of the information were considered to be lawful, we believe that the ‘fair’ requirement of the above principle would not be satisfied. This is because Healthcare

Inspectorate Wales staff, staff at the setting, and patients would have no reasonable expectation that their personal information would be put into the public domain. Thus, we believe release of this information into the public domain would be unfair and incompatible with the purpose for which the data was originally obtained.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.