



Llywodraeth Cymru
Welsh Government

E-mail request

Our ref: ATISN 14702
Date: 26 January 2021

Dear

ATISN 14702

Thank you for your request which I received on 27 December 2020. I have provided my response against each of the questions you submitted, as follows:

- how much the Welsh Government pays Stonewall to be a member of their Diversity Champions scheme?

Information is exempt under Section 21 of the Freedom of Information Act (2000) – information readily accessible to the applicant by other means. The information requested can be found here <https://gov.wales/sites/default/files/publications/2020-12/atisn14538.pdf>

- copies of all the information which was sent to Stonewall enabling that organisation to rate the Welsh Government at ninth place in their top 100 employers list for 2020.

Please see accompanying documents. I have concluded that some of the information you have requested is exempt from disclosure under Section 40(2) of the Freedom of Information Act (2000). Annex 1 of this letter refers.

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

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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 1998 (‘the 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, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual. I have concluded that this relates to the names (and other associated personal information) of those who are identified within or contributed to the submission (e.g. personal case studies).

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 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:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. 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 Interest Test

The Welsh Government recognises there is a legitimate interest in being able to identify individuals involved in any discussions or who contributed to the submission (to help understand the reason for their involvement). We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow the overall context of the submission. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose any personal information caught by your request - we do not believe it is necessary to disclose the personal data to understand the information.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, 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.