

By Email:

4 February 2021

Dear

Reference: ATISN 14732 – Request for Information - Hospital Acquired COVID Deaths at Wrexham Maelor Hospital in July 2020

Further to your email of 07 January 2021 requesting:

All correspondence listed in the Chief Constable's letter dated 28 October between the Police, Healthcare Inspectorate Wales (HIW), Betsi Cadwaladr University Health Board (BCUHB), to include a copy of the Clinical Advisor's report and relevant infection control guidelines.

Please find attached the following information in response to your request:

- Attachment 1 - HIW email Correspondence with North Wales Police - 39 Deaths Due to Hospital Acquired Covid – dated 8 October 2020.
- Attachment 2 - HIW letter to BCUHB - Safety of Staff and Patients During COVID-19 - Outbreak at Wrexham Maelor Hospital – dated 31 July 2020
- Attachment 3 - BCUHB letter to HIW in response to Covid-19 concerns Wrexham Maelor Hospital – dated 7 August 2020
- Attachment 4 - HIW internal email correspondence - Covid-19 Wrexham Maelor Hospital - dated 31 July 2020, 7 August 2020 and 10 August 2020

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

Information being withheld	Section number and exemption name
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Gwirio bod pobl yng Nghymru
yn derbyn gofal da

Checking people in Wales are
receiving good care

Third party personal data in the form of names, contact details, and other information relating to HIW staff, North Wales Police and BCUHB	Section 40(2) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.
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In the second part of your request you ask for the Clinical Advisor's report and relevant infection control guidelines. On receipt of the concerns HIW sought assurance from the health board in relation to each matter of concern. The health board provided a detailed response about the actions being taken, and as is usual practice within HIW this response was reviewed by a number of HIW officers, which on this occasion included a clinical advisor. A formal report was not produced. Further written assurance was not requested from the health board at that time, however in accordance with HIW processes the concern remained under review through the HIW Relationship Management function. I have included the email which details our consideration of the matter.

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: Freedomofinformation@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

Enclosures:

- Attachment 1 - HIW email Correspondence with North Wales Police - 39 Deaths Due to Hospital Acquired Covid – dated 8 October 2020.
- Attachment 2 - HIW letter to BCUHB - Safety of Staff and Patients During COVID-19 - Outbreak at Wrexham Maelor Hospital – dated 31 July 2020
- Attachment 3 - BCUUB letter to HIW in response to Covid-19 concerns Wrexham Maelor Hospital – dated 7 August 2020
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Annex A

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

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 and therefore the names and contact details of individuals within Betsi Cadwaladr Health Board, North Wales Police, and 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 the individuals concerned 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.