



Llywodraeth Cymru  
Welsh Government

ATISN 14883

17 February 2021

Dear

### **ATISN 14883: Velindre Cancer Centre Letter**

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 12 February. You requested information regarding a letter posted on our Disclosure Log, specifically:

- *A copy of the letter, dated 14th January 2021 which was sent to Minister for Health and Social Care, relating to the proposed Velindre Cancer Centre with the names of all the signatories included.*

### **Our Response**

The names of the clinicians were not issued to the original requester and not published on our Disclosure Log as we have respected their request for anonymity. We consider the names of the clinicians to be personal data and therefore are withheld under section 40(2) of the Freedom of Information Act 2000. For further information please see attached at **Annex 1**.

### **Next Steps**

The request you sent me contains personal information about you - for example, your name and address. The Welsh Government will be the data processor for this information and, in accordance with the General Data Protection Regulation, it will be processed in order to fulfil our public task and meet our legal obligations under the Act to provide you with a response.

We will only use this personal information to deal with your request and any matters which arise as a result of it. We will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Under data protection legislation, you have the right:

- to be informed of the personal data we hold about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability

- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further information about the information which the Welsh Government holds and its use, or if you wish to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ  
Email: [DataProtectionOfficer@gov.wales](mailto:DataProtectionOfficer@gov.wales)

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  
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.

## Freedom of Information Act 2000: Section 40(2)

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 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.

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 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

Your request indicates you wish to be able to identify the clinicians who signed the letter regarding the proposed Velindre Cancer Centre. You have not provided any reason why you want the information but we recognise that disclosure of the names could add weight to the arguments put forward in the letter, for example, if the signatories included eminent individuals with a long and distinguished career. As such we accept that there is a legitimate interest in disclosure of the signatories.

### 2. Is disclosure necessary?

The signatories, on submitting the letter to the Welsh Government, submitted two copies, one with the signatories and a second, anonymised, version for publication should the letter be subject to a Fol request. They also provided a note making it clear that consent to

release their names was not provided. Whilst we recognise that disclosure of the identities of the signatories can add weight to the arguments put forward in the letter, we do not believe that it is necessary to release the names for the letter to be understood or given an appropriate weighting.

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

As we do not believe disclosure of this personal data is necessary, and given the individuals have not provide consent to disclosure, there is no requirement on us to undertake a test to balance the legitimate interests against the right of individuals, as the fundamental rights and freedoms provided by the DPA are not being challenged.