



Llywodraeth Cymru  
Welsh Government

## E-mail request

Our ref: ATISN 15248

Date: 15 July 2021

Dear

### **ATISN 15248**

Thank you for your request which I received on 17 June 2021.

In your request (our reference ATISN 15257), you asked for information on the Centre for Digital Public services, the employment of Perago staff into the Centre, by existing Perago staff already working there and the recruitment process in place. You have now asked for the following:

- Information on interviewees / decision makers on the recent procurement for the 'Centre for Digital Public Services Programme Delivery Manager' which was awarded to a Perago Wales employee; and
- the day rate awarded on this considering the above market average available rate of £900 per day.

On the first part of your request, we are exempting information about the interviewees as outlined at Annex 1. The decision makers who formed the panel for the recruitment of the Delivery Manager at the Centre for Digital Public Services were:

- Sally Meecham, Centre for Digital Public Services
- Ross Ferguson, Government Digital Service
- Janine Pepworth, Welsh Government

In relation to the second part of your request, the Delivery Manager role was filled via a recruitment process and not by a procurement exercise. The Welsh Government, therefore, does not hold the information you have asked for about day rates.

You may also wish to note that the successful candidate was not, and never has been, a Perago-Wales employee.

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

### **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 exchanging correspondence.

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 does not believe that there is any legitimate reason why the personal data of interviewees should be released. Applicants for the post of Delivery Manager at the Centre for Digital Public Services would not have expected their names to be released into the public domain at any time, especially if their application was unsuccessful. The Welsh Government cannot identify any 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 the personal information of the interviewees as you requested. We do not believe it is necessary to disclose the personal data about interviewees to understand that a fair and open recruitment process was in place and was followed. We have released the personal information about the recruitment and selection

panel for transparency but personal information about the interviewees does not need to be released to demonstrate that the recruitment process has been followed.

### **3. The Balancing Test**

As it has been concluded it is not necessary to disclose the personal information about interviewees 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 about interviewees 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.