

20 September 2023

Dear

Reference - ATISN 18828 - Maternity Services - Swansea Bay University Health Board

Thank you for your email received on 4 August 2023 requesting all emails/ correspondence/documentation relating to maternity services in Swansea Bay University Health Board held by/sent by/received by HIW since 1 February 2022. A response to your information request is provided below.

Please find attached Document 1, which contains information held by HIW that is captured by your request.

We have decided that certain information is exempt from disclosure. Our application of the various exemptions is set out in Annex A to this response.

Information being withheld	Section number and exemption name
Third party personal data in the form of contact details relating to staff within HIW and members of the public.	Section 40(2) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.
Information provided in confidence.	Section 41 of the Freedom of Information Act. Information provided in confidence.
Information pertaining to future inspection and regulatory activity.	Section 31 of the Freedom of Information Act. Law enforcement.

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

Enclosure: Freedom of Information Request - ATISN 18828 - Information captured by request - Attachment 1

Annex A

This Annex sets out the reasons for the use of the exemptions as outlined in the response.

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 concerns 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

Whilst we recognise the legitimacy in openness and transparency that release would engender, it's important to note that releases under the Freedom of Information Act (FOIA) are made 'to the world' and published on our disclosure log. However, we do not believe the release of personal data is legitimate.

2. Is disclosure necessary?

We do not believe disclosure of third-party personal data into the public domain is necessary in this case.

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

Although we do not believe the disclosure to be 'necessary' in this context, we also believe that the 'fairly' requirement of the above principle would not be satisfied in that any individuals caught by the request 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. 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.

Section 41 - Information provided in confidence

Section 41 provides an exemption to the right of access under the Freedom of Information Act if release would be an actionable **breach of confidence**. This exemption qualifies the right of access under Freedom of Information Act by reference to the common law action for 'breach of confidence'.

A breach will always be actionable if:

- the information has the necessary quality of confidence;
- the information was imparted in circumstances importing an obligation of confidence; and
- there was an unauthorised use of the information to the detriment of the confider (the element of detriment is not always necessary).

Information that is being withheld under this exemption has been shared with us to enable us to conduct investigations on their behalf. In all cases, the individual has either specifically requested that the information be kept confidential, or the nature of the information leads us to determine that the information should be kept confidential in order to protect the anonymity of the sender. Release of such information into the public domain could result in the individual being identified and they could experience adverse effects as a result, which would be to the detriment of the confider.

Section 31 - Law enforcement

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are—

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

HIW has a function to inspect and regulate healthcare services against a range of standards, policies, guidance and regulations to highlight areas requiring improvement. Therefore, any information that would prejudice HIW's ability to perform that function is exempt from disclosure.

Hospital inspections are usually unannounced. This allows us to see services in the way they usually operate. The service does not receive any advance warning of an unannounced inspection. We have considered some of the information caught by the request and determined that its release would harm our ability to exercise our duty as a public authority in respect of the functions outlined in subsection 2, a-c, above. Therefore, there is a very strong public interest in protecting HIW's ability to inspect and regulate healthcare services.