

**Grŵp Iechyd, Gofal Cymdeithasol a'r Blynyddoedd
Cynnar Health, Social Care and Early Years Group**



Llywodraeth Cymru
Welsh Government

Ref: ATISN 19693

8 August 2024

Dear ,

ATISN 19693 – Joint Executive Team

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 20 June 2024 regarding specific documents in relation to the Joint Executive Team. We apologise for the delay in responding.

You requested the following:

- *Documents pertaining to the Joint Executive Team (JET) meeting conducted by the Health and Social Services Division of NHS Wales in December 2023.*
 - *The documents of interest include the papers presented during the meeting, the subsequent minutes, and importantly, the Terms of Reference.*

Our Response

The Welsh Government holds information that falls within the scope of your request. However, some of this information is being withheld under the following provisions of the FOI Act:

- Section 36(2)(b)(i) inhibit the free and frank provision of advice; and
- Section 36(2)(b)(ii) inhibit the free and frank exchange of views for the purposes of deliberation
- Section 36(2)(c) otherwise prejudice of the effective conduct of public affairs.

An explanation of the use of these exemptions is provided at Annex 1 attached.

The Terms of Reference of the JET meetings are not exempt under the FOI Act, and therefore I have attached a copy to this email – see Doc 1.

Next Steps

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,

Annex 1

The Freedom of Information Act (FOIA) provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations. We have decided to withhold the following information:

Information being withheld	Section number and exemption name
<p>Specific documents pertaining to the four Health Joint Executive Team (JET) meetings in December 2023.</p> <ul style="list-style-type: none">• Welsh Ambulance Services University NHS Trust – 01 Dec• Betsi Cadwaladr University Health Board – 05 Dec• Public Health Wales – 06 Dec• Health Education and Improvement Wales (HEIW) – 13 Dec <p>The documents of interest include the papers presented during the meeting and subsequent minutes.</p>	<ul style="list-style-type: none">• Section 36(2)(b)(i) inhibit the free and frank provision of advice; and• Section 36(2)(b)(ii) inhibit the free and frank exchange of views for the purposes of deliberation.• Section 36(2)(c) would otherwise prejudice the effective conduct of public affairs.

This Annex sets out the reasons for the engagement of section 36 of the FOIA and our subsequent consideration of the Public Interest Test.

Engagement of section 36(2) of the Freedom of Information Act 2000

Section 36 (2) of the FOIA reads:

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(b) would, or would be likely to, inhibit—

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

The FOIA has introduced a two-stage process for considering and using the section 36 exemptions. Stage 1 involves deciding whether the basic conditions for triggering the application of the exemption apply. This is the role of the 'qualified person'; in the Welsh Government, 'qualified person' means the Welsh Ministers or the Counsel General. If the

qualified person decides that the information would, or would be likely to, have the specified adverse effect(s), then the exemption is said to be engaged and Stage 2 can commence. Stage 2 considers the statutory public interest test before deciding whether to withhold or release the information.

Stage 1 – Engagement of Exemptions

The Welsh Government believes that these exemptions are engaged in relation to the release of documents regarding the Joint Executive Team (JET) meetings that were held in December 2023, and that they should be exempt from disclosure.

Why we believe section 36 (2)(b)(i) and section 36 (2)(b)(ii) are engaged

The aim of the JET meetings is to utilise all available information and intelligence from the health organisation to assess the progress it is making against its core objectives, to understand delivery risks and issues of concern. This information and discussion will feed into decisions about the appropriate level of escalation, and therefore level of support, that is required for an organisation. Participants should feel free to contribute fully to the process and be prepared to engage at any point.

The JET meeting process relies on those participating in the meetings being able to fully engage and provide free and frank advice and have a free and frank exchange of views. For all those involved in the process, there is a need for uninhibited frank and candid dialogue in providing this advice, and it is imperative that views on the status of various elements of health boards' circumstances can be exchanged freely and frankly.

We consider that disclosure of these notes, supporting documents and correspondence relating to the JET meetings would be viewed as a removal of the 'safe space', and would be likely to inhibit both the free and frank provision of advice and exchange of views by attendees in future discussions.

Why we believe section 36 (2)(c) is engaged

We believe it is an essential element of the effective management of the NHS in Wales that there is a 'safe space' for officials to raise any concerns that they identify, relating to the management of health services.

Releasing the information from these meetings into the public domain would be likely to significantly undermine any 'safe space' and participants will be less likely to share relevant information. This would in turn be likely to prejudice both the proper functioning of the process and the realisation of its aims. On many occasions the issues discussed may not be resolved for some time, and it is essential that learning is shared before the resolution, but officials consider this may be unlikely to happen if the meeting papers were released. We wish to ensure that those who raise any concerns or disclosures, feel confident and safe to do so.

The 'qualified person' has agreed that all of the above three parts of section 36 are engaged.

Stage 2 – Public Interest Test

In order to satisfy the public interest test in relation to the exemptions, it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to outweigh the public interest arguments in favour of release.

Public interest arguments in favour of disclosure:

We believe that the public interest arguments in favour of disclosure would be the same for all three exemptions. As such we have set out these once.

The public interest in the context of the FOIA means the public good, it is not:

- what is of interest to the public; or
- the private interests of the requester (unless those private interests reflect what is the general public good, e.g. holding public authorities to account).

As well as the general public interest in transparency, which is always an argument for disclosure, we recognise that there is a great deal of public and media interest in disclosing information surrounding the Welsh Government and its dealings with local health boards and other health organisations across Wales. Consequently, we acknowledge that there is public interest in releasing this information as it would provide an insight into the operation of Wales' health boards and trusts.

Public interest arguments in favour of withholding

The section 36 exemptions are engaged because of the wider impact of releasing documents concerning meetings conducted in a 'safe space' where participants are able to discuss openly. It would work against the public interest if the people who attend these meetings were deterred from raising issues of quality and/or safety for fear of the information being published.

There is a public interest inherent in prejudice-based exemptions, such as section 36(2)(b) and (c), to avoid the harm specified in those exemptions.

In this instance, we believe that it is the 'would be likely' limbs of each of the exemptions that applies. This means that we need to consider whether:

- there is a plausible causal link between the disclosure of the information in question and the argued prejudice; and
- there is a real possibility that the circumstances giving rise to prejudice would occur, i.e. the causal link must not be purely hypothetical; and
- the opportunity for prejudice to arise is not so limited that the chance of prejudice is in fact remote.

Section 36 (2)(b)(i) – Inhibit free and frank provision of advice

Section 36 (2)(b)(ii) – Inhibit free and frank exchange of views for the purposes of deliberation.

As mentioned previously, the aim of the JET meetings is to utilise all available information and intelligence from the health organisation to assess the progress it is making against its core objectives, to understand delivery risks and issues of concern. It is important for those involved in the JET meetings to provide free and frank advice, and that views on the current status of various elements of health boards' circumstances can be exchanged freely and frankly, in order to inform decisions on appropriate levels of escalation.

Many themes and issues raised within JET meeting notes and related information remain consistent and if participants believe that information and issues they discuss might be released in the future, then it is likely to inhibit free and frank provision of advice and exchange of views.

Section 36(2)(c) – Would be likely otherwise to prejudice the effective conduct of public affairs.

Officials of the Welsh Government rely on the information shared at JET meetings to provide support and guidance to health boards and trusts. The information is of a sensitive nature, and we believe that the most effective way to conduct these meetings is to ensure that the information can be shared in a blame-free environment. Releasing the information in the JET papers into the public domain would make it impossible for us to maintain such an environment and would be likely to prejudice the effective conduct of the JET meetings. This would not be in the public interest, as the Welsh Government would not be able to provide the same level of support and guidance to health boards and trusts in Wales.

Balance of public interest test

On balance, officials consider that the public interest in maintaining the exemptions outweighs the public interest in releasing the information. More specifically, we believe the public interest in releasing the information is of short-term value only, whereas the public interest in maintaining the exemption is long-lasting. This is because the likely harm caused by releasing the information would not only restrict the Welsh Government's access to information that is essential for overseeing the health boards and trusts, but it would also mean that this information would not be available to the public in the future either – e.g. in response to subsequent FOI requests. The balance is therefore between a *one-off* benefit to the public interest by releasing the information, versus an *enduring* benefit to the public interest by maintaining a process that ensures safe and effective governance of a public health service.

Accordingly, we believe that the information related to the JET meetings and supporting documents should be withheld on the basis that its release would be likely to inhibit the free and frank provision of advice and exchange of views, and that it would be likely to prejudice the effective conduct of public affairs. Because of this, the information has been withheld under section 36(2) of the Freedom of Information Act 2000.