

31 October 2022

Dear

ATISN 16750 - Request for Information regarding a childcare service

Thank you for your request for information received on 06/10/2022.

You asked us to confirm when a concern relating to Cylch Meithrin Dinas Powys was received by Care Inspectorate Wales.

Our response

We have decided information about when a concern was received by CIW is exempt from disclosure under the following sections of the Freedom of Information Act 2000:

Section 40(2) 'Personal information'
Section 41(1) 'Information provided in confidence'.

Our reasons for applying these exemptions are set out at Annex 1 to this response.

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: 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 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 2000 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
Information about when a concern regarding Cylch Meithrin Dinas Powys was received by CIW.	Section 40(2) of the Freedom of Information Act 2000 – ‘Personal information’. Section 41(1) of the Freedom of Information Act 2000 – ‘Information provided in confidence’.

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 2018 (‘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 as we believe disclosing the date when the concern was raised with CIW could lead to the disclosure of the identity of the person(s) who raised the concern, particularly as there was only one concern raised.

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”.

Freedom of Information Act 2000: Section 41(1).

Section 41 sets out an exemption from the right to know where the information was provided to the public authority in confidence.

Section 41(1) states:

(1) *“Information is exempt information if –*

- a) it was obtained by the public authority from any other person (including another public authority), and*
- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”*

When determining if disclosure would constitute a breach of confidence, we must consider;

- whether the information has the quality of confidence,
- whether it was imparted in circumstances importing an obligation of confidence, and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

In seeking feedback about care services, CIW assures people they may raise concerns with us in confidence and we will always maintain this confidentiality where possible. This is set out in our ‘Providing Feedback about Care Services Guide’ on our website. We must maintain the confidentiality of people who raise concerns with us so people can feel safe to do so, particularly where those individuals have explicitly requested anonymity. This, we believe, imports an obligation of confidence in respect of any information they provide to us, including their identity as the source of that information. We therefore believe disclosure of any information that could identify those people, which includes dates on which concerns were raised, would constitute a breach of confidence actionable by them.

Legitimate Interest

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 interest

CIW recognises there may be a legitimate interest in the disclosure of details of concerns raised about care services so that people can be assured about the quality and safety of those care services. Freedom of information requests are treated as applicant and motive blind. Whilst requesters are not obliged to state why they want the information they have requested, in the absence of any such commentary we cannot identify any particular legitimate interest in releasing the details or source of those concerns.

2. Is disclosure necessary?

We do not believe disclosure of the date a concern was raised is necessary in this case. We believe any legitimate interest in the quality and safety of specific care services can be met by other means, such as via our published inspection reports, where any concerns considered as part of that inspection will be referenced, in addition to wider areas of concern, non-compliance with the regulations and areas of risk. These reports we believe give a better overview to the public of the quality and safety of those services than details of concerns and their source.

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

In seeking feedback about care services, CIW assures people they may raise concerns with us in confidence and we will always maintain this confidentiality where possible. A person who raises concerns with us would not therefore expect this information to be disclosed to the public. Such disclosure may have potential to cause unjustified harm or distress to them. As we believe the legitimate interest in care services can be better met by other means, we believe the duty to maintain the confidentiality of people who raise concerns with us outweighs this legitimate interest. Additionally, if people raising concerns with us are not confident their identities will be protected, this could prevent them from coming forward and therefore hinder CIW's ability to undertake its regulatory role in improving the quality and safety of services for the well-being of the people of Wales.

We therefore believe any legitimate interest in disclosure of the details of concerns raised about care services does not outweigh the interest and rights of the people who raised concerns.

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 and section 41 of the Freedom of Information Act. Section 40 and section 41 are absolute exemptions and not subject to the public interest test.