

6 July 2023

Dear

ATISN 18569 – Infected Blood Correspondence

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 07 June 2023. You have requested the following:

1. Please provide copies of all correspondence relating to Infected Blood Compensation or the Infected Blood Inquiry second interim report sent to or received by the below persons (including any attachments) during the period 1st April 2023 - 6th June 2023.
 - Catherine Cody (Senior Policy Manager, Quality and Nursing Directorate)

Our Response

I can confirm that Welsh Government holds the information you have requested.

In relation to the correspondence attached, we have applied redactions under Section 40 of the Freedom of Information Act 2000 and for further information relating to this, please see **Annex A** of this letter.

We are also withholding information relating to your request under the following FOIA exemptions and our consideration of the identified exemptions is set out in **Annex B** of this letter:

- Section 28(1) sets out an exemption from the right to know, if the disclosure of the information in question would, or would be likely to prejudice relations between two or more United Kingdom administrations.
- Section 35(1)(a) of the FOIA covers any information relating to the formulation and development of government policy.

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 A

S.40 (2) – Personal information about others

Section 40 sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

Some documents captured by the request contain the names of living individuals that either emails were shared or connected with the Infected Blood policy development. Under Section 40(2) of the Freedom of Information Act (FOI Act), personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the first principle to be of most relevance in this instance.

The first data protection principle states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that the information in this case clearly falls within the description of personal data as defined by the DPA and that disclosure would breach the first data protection principle. The first data protection principle has two components:

- 1 Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.
- If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of *Deborah Clark v the Information Commissioner and East Hertfordshire District Council* where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner

determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

I have concluded that there is a reasonable expectation that the identity of the living individuals connected with the Infected Blood policy development would not be made public. It is my view, therefore, that disclosure of the redacted information would breach the first data protection principle, and thus is exempt from release under section 40 of the FOI Act.

Annex B

Engagement of Exemptions

When considering the release of information captured by a request we are required to consider the potential effects of disclosure of the information to the wider World. This is because information released in response to a Fol request is released to the World, not just to the person submitting the request. As such we need to take into account how any other individual may use, or misuse, the information if it is placed into the wider public domain. So whilst the request may have a legitimate, and benign, interest in accessing the requested information, we could conclude that the risk that the information could be misused by others is more compelling and thus the information should be withheld.

Section 28(1)

Section 28(1) sets out an exemption from the right to know, if the disclosure of the information in question would, or would be likely to, prejudice relations between two or more United Kingdom administrations.

We believe at this point in time that should we disclose any information relating to Infected Blood Compensation or the Infected Blood Inquiry second interim report, our day to day working relationship with the other administrations within the UK would be significantly prejudiced. As would be expected, there is a significant flow of information between the administrations as we look to develop a compensation scheme for those infected and/or affected. Once agreed, the outcome of the discussions will be shared with government ministers for approval before being released to the public.

Public interest arguments in favour of release

Infected blood is an issue that generates widespread public interest. All four UK governments are committed to a compensation scheme that reflects the appropriate recompense required for those infected and/or affected by infected blood and details should be available to the public as soon as possible.

Public interest arguments in favour of withholding

At this point of time information is passing between government agencies on different approaches to a scheme and it would not be in the public interest to release information until this is agreed. The proposals will firstly be presented to ministers across the four nations for approval.

Section 35(1)(a)

Section 35(1)(a) covers any information relating to the formulation or development of government policy.

The policies dealing with an Infected Blood Compensation Scheme are being considered as all four UK administrations work together to achieve this.

Public interest arguments in favour of release

There is a very strong public interest in the ongoing development of our policies for the Infected Blood Compensation Scheme.

Public interest arguments in favour of withholding

All UK Nations are working towards a UK Compensation Scheme. This will eventually contribute to forming new policies for all the UK nations. We consider that it is important for ministers and officials from all administrations to be able to undertake discussions, make recommendations and formulate new proposals with regard to dealing with infected blood compensation and only release information when approved as a UK policy.

Conclusion

In conclusion, we believe that the risk of harm outweighs the public interest in disclosure.