

11 July 2023

Dear

ATISN 18629

Thank you for your request which I received on 14 June 2023. You asked for the following:

information which demonstrates Mr Waters has received sufficient training regarding the disclosure of personal information.

With regard to your Freedom of Information question, whilst Welsh Government can neither confirm nor deny whether we hold information of this description, I can confirm that were anything held it would be exempt from disclosure under section 40(2) of the Freedom of Information Act. Our reasoning for the application of this exemption is set out below.

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.

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

Welsh Government acknowledges the legitimate interests of openness and transparency that release would engender. Further, we acknowledge your own interest in receiving this information, given your concerns around an alleged personal data breach.

2. Is disclosure necessary?

It's important to note that in the circumstances set out within the request received, Welsh Government is not the Data Controller and so is not accountable for how a constituent's data may have been processed by Mr Waters (and whether that is informed by any training that may or may not have been undertaken). Whilst we acknowledge your own personal interest in this information, there are two more appropriate formal channels whereby your concerns can be dealt with:

As outlined within the separate response you have received from our Complaints Unit, complaints about Members of the Senedd are considered by the Standards Commissioner for Wales. Further information can be found on their website [Making a complaint | Standards Commissioner Website \(standardscommissionerwales.org\)](https://standardscommissionerwales.org)

The second option, should you wish to raise a data protection complaint about how Mr Waters may have processed any constituent's data, would be to contact the Information Commissioner's Office (ICO). The ICO are the UK's independent regulator for data protection matters and their contact are set out below.

3. The Balancing Test

Given the above routes of formal complaint and given the fact that releases under FOIA are made to the world at large, Welsh Government believes that release of the information requested, if held, would constitute a disproportionate and unwarranted level of interference with the data subject's rights and freedoms; they would have no expectation their information would be released in this way in this context.

That being the case, whilst we neither confirm nor deny whether we hold information of the type requested, we believe that *were* the information held, it would be exempt from release under section 40 of the FOIA. Section 40 is an absolute exemption and not subject to the public interest test.

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 e-mail: 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

Telephone: 0303 123 1113

Website: www.ico.org.uk

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely