

19 September 2023

Dear

Reference - ATISN 18862 - Deprivation of Liberty Orders

Thank you for your information request received on 21 August 2023. A response is provided below.

- 1) Please could you provide me with the data from each local authority and health board to compile the statistics for the Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care 2021-22 as outlined below at paragraph a) and b). This should include the anonymous details listed above for each public body, and the number of referrals to the court of protection. In particular, please break down the demographic profile by age as far as possible, using ranges if there are anonymity issues, such as 'Under 18, 18-24, 24-50, 50-65, 65-75, 75+'*

Please provide this for all financial years held by HIW, including for 2022/23.

Please find attached the DoLs Demographic Data for 2019-2022. We have not included the Demographic Data for 2022-2023, as this has not yet been compiled for inclusion in the Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care 2022-23.

HIW is withholding the DoLs application data submitted by each Local Authority (LA) and Local Health Board (LHB) under Section 40(2) of the Freedom of Information Act, as it is personal data protected by the General Data Protection Regulations and Data Protection Act 2018. Although it is anonymised, the person's age range, gender, ethnicity and LA/LHB location could be sufficient to identify the individual, particularly where they are the only person who fits that particular demographic.

Further details of our application of this exemption can be found in Annex A.

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

Enclosures:

Attachment 1 - DoLs Demographics - 2019-2022

Annex A

This Annex sets out the reasons for the use of Section 40(2) of the Freedom of Information Act.

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.

2. Is disclosure necessary?

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

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

We believe that the 'fairly' requirement of the above principle would not be satisfied in that an individual would have no reasonable expectation that their personal information would be put into the public domain, and sharing their personal data could have unjustified adverse effects on them. 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.