



Ref: ATISN 19267

6 December 2023

Dear ,

ATISN 19267 – Accountability Ministerial Task & Finishing Group

Thank you for your email received on 08 November 2023 which has been dealt with under the Freedom of Information Act (2000). You had requested the following:

- 1. Any documentation / records / correspondence (of any kind) the Welsh Government Public Appointments Unit hold with regard to the appointment of Mark Hackett to this group.*
- 2. Any documents / records / correspondence held by the Welsh Government directly relating to the appointment of Mark Hackett. I understand the Health Minister approves members personally, these records need to be included.*

Our Response

1. Welsh Government Ministers are able to determine how appointments are made to Ministerial Task and Finish Groups. Such Groups are established to advise Ministers on a particular area of policy and operate for a specified, short period of time. Members of such Groups are not remunerated and are appointed by, and report directly to, Welsh Government Ministers. Advisory Groups therefore fall outside the remit of the Commissioner for Public Appointment's Code of Practice for Ministerial Appointments to Public Bodies.

The Ministerial Accountability Task and Finish Group was established under this procedure to advise on Governance and Accountability for the NHS in Wales and is due to conclude its work in Spring 2024. The Group will report to the Minister for Health and Social Services at the end of their term. The Public Appointments Unit does not hold any information with regard to the appointment of Mark Hackett for the reason set out above.

2. Attached is a copy of the Minister for Health and Social Services Appointment letter and a copy of the invitation to join the Group.

I have decided that some of the information captured within the documents is exempt from disclosure under Section 40(2) – Personal Information of the Freedom of Information Act. As a result, you will see that this information has been redacted. The reasons for applying this exemption are set out in full in Annex 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

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.

The requested documents contain the names of living individuals. 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 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.