

Dear

ATISN 19272 – Equality Impact Assessments

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) which was received on 10 November 2023.

You have requested the following relating to 2022 and 2023:

- 1. Any information or communications between HSS Workforce & OD (HSSW&OD) or Equality and Human Rights Divisions (EHRD) and the Equality and Human Rights Commission, relating to the completion/ non completion/ inadequate completion of impact assessments or equality impact assessments.*
- 2. Any information, emails or records of communications between HSSW&OD and EHRD relating to the completion/ non completion/ inadequate completion of impact assessments or equality impact assessments.*

Our Response

Please find attached documents which have been caught by your request.

We 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 is 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.