

Dear

ATISN 20070: Request for Information regarding Priority Action Notices.

Thank you for your request for information received on 10/01/2024. You asked for the following information:

1. Copies of the priority action notices issued by Care Inspectorate Wales to each of the care providers listed in your request on specific dates.
2. In each case, if not already included in the priority action notice, the reason for the notice.

Our Response

We have considered your request under the Freedom of Information Act 2000. The information you requested held by Care Inspectorate Wales (CIW) is enclosed.

It is important to note these documents are copies of the Priority Action Notices as they were issued following the relevant inspection. Providers are expected to take appropriate action to make improvements in the areas detailed in the notice. Therefore, they are not necessarily an indicator of the current situation in the service. It is also important to note the providers of some services may have changed since the notices were issued.

We have decided that some of the information included within the Priority Action Notices requested is exempt from disclosure under the following sections of the Freedom of Information Act 2000:

Section 40(2) 'Personal information'

Section 31 (1)(a) 'Law Enforcement'

Section 38 (1)(b) 'Health and Safety'

Our reasons for applying these exemptions are set out at Appendix 1 to this response.

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: 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 the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,

Appendix 1

The Freedom of information Act provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

We have decided to withhold the following information:

Information being withheld	Section number and exemption name
Personal data of people at the care services	Section 40(2) 'personal data' of the Freedom of Information Act
Information about security and medication storage at care homes premises.	Section 31(1)(a) - 'Prevention or detection of crime' And Section 38(1)(b) - 'Health & Safety' of the Freedom of Information Act

Freedom of Information Act 2000: Section 40(2)

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 ('the 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, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to 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, some information contained within the notices requested is 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 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".

Legitimate Interest

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 interest

CIW recognises there may be a legitimate interest in the disclosure of details of Priority Action Notices (PANs) issued to care services so that people can be assured about the quality and safety of those care services. Freedom of information requests are treated as applicant and motive blind. Whilst requesters are not obliged to state why they want the information they have requested, in the absence of any such commentary we cannot identify any particular legitimate interest in releasing third-party personal data contained within these notices.

2. Is disclosure necessary?

We do not believe disclosure of the personal data of the services' residents/users and/or staff included within the PANs is necessary in this case. We are not withholding all the information included within the PANs, the evidence that led to the issuing of the PANs can still be identified within the PANs. We believe any legitimate interest in the quality and safety of specific care services can also be met by other means, such as via our inspection reports published on our website.

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

When carrying out inspections at care services, CIW assure the service provider, staff and residents/users any personal data they provide for evidence during an inspection will always remain confidential where possible. People would not expect any personal data shared with CIW during an inspection to be disclosed to the public. Such disclosure may have potential to cause unjustified harm or distress to them. As we believe the legitimate interest in care services' quality and safety can also be met by other means, we believe the duty to maintain the confidentiality of people's personal data outweighs this legitimate interest. Additionally, if people are not confident their identities will be protected this could prevent them from providing their personal data during future inspections and therefore hinder CIW's ability to gather evidence when undertaking its regulatory role in improving the quality and safety of services for the well-being of the people of Wales.

We therefore believe any legitimate interest in disclosure of the full details of these PANs does not outweigh the interest and rights of the people's personal data gathered during inspection.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. 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.

Section 31 - ‘Law Enforcement’

Section 31(1) of the Freedom of Information Act 2000 (FolA) states:

31 (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime

We believe disclosure of information contained within the notices which relates to the security of the premises and the medication storage arrangements is exempt from disclosure under the ‘prevention’ arm of this exemption.

CIW, as a public authority, have a statutory duty to ensure people who provide a care service are fit to do so. To ensure they are fit to provide a care service, inspections are carried out and evidence is gathered. The evidence within some of these Priority Action Notices contain details about the security of access to the premises, security of people’s personal belongings and storage of medication, which if put in the public domain could harm efforts taken by the care homes to prevent crime. For this reason, we believe disclosure of this information should be withheld under the subsection (a) above.

Public Interest Test

Section 31 is a prejudice-based exemption and is subject to the public interest test. This means not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

We believe the public interest arguments in favour of maintaining the exemption are sufficient to outweigh the arguments in favour of disclosure. This is because while releasing the information might enhance public scrutiny of decision making, it would be likely to prejudice the prevention or detection of crime at the care home premises.

There is a public interest in knowing that people (adults and children) are safe in a care service registered and inspected by CIW. Evidence gathered at a care service during an inspection that identifies lack of security for people (residents and/or staff) and their belongings, which led to a non-compliance of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (RISCA) being issued to the service provider as a PAN should only be viewed by the service provider to ensure that action is taken to ensure compliance is achieved in the timescales specified. The release of this information exposes the service, provider, residents and staff to risk should the evidence within the PAN be put in the public domain.

We have therefore concluded the public interest in preventing prejudice to the matters set out above outweighs the public interest in disclosure in this case. The information is therefore withheld under section 31 of the FoIA.

Section 38 - 'Health and Safety'

Section 38(1)(b) of the Freedom of Information Act 2000 (FoIA) states:

38 (1) Information is exempt information if its disclosure under this Act would, or would be likely to -

(b) endanger the safety of any individual

We believe disclosure of information contained within the notices which relates to the security and medication storage arrangements at the care service is exempt from disclosure under section 38(1)(b)

CIW, as a public authority, have a statutory duty to ensure people who provide a care service are fit to do so by inspecting their service. Should CIW gather any evidence while inspecting a care service and the evidence leads to CIW issuing a PAN. Within some of the PANs we are providing you there is evidence about medication storage arrangements and concerns regarding the security of the premises which if put in the public domain could endanger people residing/using the service' physical or mental health or safety. For this reason, we believe disclosure of this information should be withheld under the subsection (b) above.

Public Interest Test

Section 31 is a prejudice-based exemption and is subject to the public interest test. This means not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

We believe the public interest arguments in favour of maintaining the exemption are sufficient to outweigh the arguments in favour of disclosure.

There is a public interest in knowing that all registered services' residents/users and/or staff's health and safety is of good standard. The good standards of health and safety include satisfactory security and medication storage of controlled drugs on the premises. Releasing information about security arrangements and location of medication (controlled drugs) at care homes could expose vulnerable people at the care service to danger to their health and/or safety.

We have therefore concluded the public interest in preventing prejudice to the matters set out above outweighs the public interest in disclosure in this case. The information is therefore withheld under section 38 of the FoIA.