

12 February 2024

Dear

**ATISN 20091**

Thank you for your request which was received on 15 January 2024.

Following our request for clarification, you confirmed the time period in relation to bullets 1 to 3, and all other bullet points is ideally no later than one calendar month, starting from the day Welsh Government received your request.

For the time period you confirmed, my response to each question is as follows:

- How many employees have raised concerns around racial discrimination?
- How many employees have left Welsh Government due to racial discrimination?
- How many racial discrimination cases have gone to the employment tribunal?

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- How many active/live cases of racial discrimination cases are there currently at the employment Tribunal? If yes, can you provide details of those cases?

I have concluded the information requested is exempt from disclosure – please see Annex 1.

- Please provide your anti-racism policy.

I can confirm Welsh Government does not have an internal policy specifically on anti-racism. Our commitments to being an anti-racist organisation are captured in our Equality, Diversity and Inclusion strategy and the supporting internal delivery plan and in the leadership chapter of the Anti-racist Wales Action Plan.

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](mailto: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](http://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

## **Annex 1**

### **Section 32 (1) exemption – Court documents**

I can neither confirm nor deny the requested information is held. Were it held I have concluded it would be exempt under Section 32(1).

Section 32(1) of the FOIA, information held by a public authority is exempt if it is held only by virtue of being contained in

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by—
  - (i) a court, or
  - (ii) a member of the administrative staff of a court,

for the purposes of proceedings in a particular cause or matter.

Under Section 32(3), the duty to confirm or deny does not arise in relation to information which would be exempt under Section 32(1).

## **Section 40(2) – Personal information.**

I can neither confirm nor deny the requested information is held. Were it held I have concluded it would be exempt under Section 40(2) of the Freedom of Information Act 2000 (FOIA), together with the conditions in Section 40(5B)(a)(i).

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 1998 (‘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. Information would likely also be special category data relating to race or ethnic origin - conditions for the release of special category data are very restrictive under Article 9(2) of the UK GDPR.

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) and Article 9(2) in the context of a request for information under FOIA it would be 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; and
3. the Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Were information held, my consideration of these tests is set out below:

### **Legitimate Interest Test**

The general presumption of openness that the FOIA aspires to. The Welsh Government cannot however identify any other legitimate interest in you or the public receiving the personal data captured by your request.

### **Is disclosure necessary?**

The Welsh Government is of the view that were it held it would not be necessary to disclose the personal information caught by your request.

### **The Balancing Test**

To conclude, were information held, its release 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 would therefore be withheld under section 40 of the Freedom of Information Act.