

22 April 2024

Dear

ATISN 20393 – Velindre NHS Trust

Thank you for your email which was received on 20 March 2024 and has been dealt with under the Freedom of Information Act (2000). You requested the following.

- *a copy of the report by the external investigator Stuart Grey into serious complaints involving Velindre University NHS Trust, including complaints concerning governance that were reported in January 2023*

Our Response

We can confirm that the Welsh Government does hold a copy of Stuart Gray's report.

However, we have concluded that the information requested is exempt from disclosure under section 41 (Information Provided in Confidence) of the Freedom of Information Act 2000. An explanation of this exemption is set out at the Annex to this letter.

A copy of Stuart Gray's report was provided by Velindre, in strict confidence, to one Director within the Welsh Government, for a very specific purpose. It has been stored in a secure area of our document management system. We also believe that disclosing this information to the public would constitute a breach of confidence actionable by Velindre or by one of the persons mentioned in the report. In the circumstances we recommend that you request a copy of Stuart Gray's report from Velindre.

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 A

Section 41: Information provided in confidence

Section 41 sets out an exemption from the right to know where the information requested was provided to the public authority in confidence and disclosure of the information would give rise to an actionable breach of confidence.

S 41 Information provided in confidence:

(1) Information is exempt information if—

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

Section 41 is an absolute exemption and is not, therefore, subject to the public interest test. For the purposes of s41(1)(a), I can confirm that the information has been provided to Welsh Government by a third party.

‘Confidential’ is not defined in the Act; it’s a common law concept and the test of confidentiality involves determining whether information was obtained in confidence, whether the information has the necessary ‘quality of confidence’ and whether its disclosure would constitute an actionable breach of confidence. For the purposes of s41 a breach will always be actionable if:

- the information has the necessary quality of confidence;
- the information was imparted in circumstances importing an obligation of confidence; and
- there was an unauthorised use of the information to the detriment of the confider (the element of detriment is not always necessary).

This three stage test is taken from the case of *Coco v Clarke*. For the information in question, the Welsh Government believes it has the necessary ‘quality of confidence’; the information is not otherwise accessible and it is not trivial.