



Ref: ATISN 26265

13 November 2025

Dear ,

ATISN 26265 – Gender Recording

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 16 October 2025, in relation to the recording of sex and/or gender in health records.

You requested the following:

- 1. Provide any proposals, draft or otherwise, relating to the recording or presentation of sex and/or gender in health records, and any correspondence relating to this topic dating from 1 November 2024 to 16 October 2025.*

Our Response

Welsh Government holds information which fits the description of your request and the information is attached – see Documents 1 and 1a.

We have concluded that some of the information requested is exempt from disclosure under the following sections of the Freedom of Information Act:

- Section 40(2) – Personal Information of the Freedom of Information Act. An explanation of our application of this exemption is set out at Annex 1 to this letter.

The information is part of a proposal for establishing data standards which is being completed by Digital Health and Care Wales working with key stakeholders. This is ongoing work and is not to be seen as an approved/definitive model that is going to be applied and is subject to further consultation and changes.

The work will be taken forward to bring coherence in data standards collection, which is being developed by the patient demographic working group. The group will include all boards, trusts and SHA's across NHS Wales, with a mix of clinical voices (geneticists, paediatricists, endocrinologists, gynaecology/maternity, urology, plastic/maxillofacial surgery), information governance leads, demographics managers, records management, patients as well as involvement with WG equalities policy leads and colleagues across the border.

As the standards are developed it will be regularly reviewed for progress in line with the governance in place for the Digital, Data and Technology (DDAT) leadership board.

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

Freedom of Information Act 2000: Section 40(2) Personal information about others
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 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.

We have concluded that, in this instance, the information caught by your request contains 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”.

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 interests

Your request includes emails which were caught by your request. I have not identified any legitimate interest that you may have in knowing the identities of those individuals

named within the information.

2. Is disclosure necessary?

We do not believe disclosure of the identities of those involved would allow any greater understanding of the content of the information.

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

As we do not believe disclosure of this personal data is necessary, there is no requirement on us to undertake a test to balance the legitimate interests against the right of individuals, as the fundamental rights and freedoms provided by the DPA are not being challenged.

I have concluded that there is a reasonable expectation that the identity of the living individuals named in the information 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.