

13 August 2026

Dear

ATISN 27230

Thank you for your request which I received on 18 July. You asked for the information outlined at Annex A.

Our response

I can neither confirm nor deny that we hold any such information under section 40(5) of the Freedom of Information Act (FOIA). The grounds for applying this exemption are set out in full at Annex B to this letter.

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 e-mail: 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

Website: 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 A

Anonymised level information only relating to bullying, harassment and leadership concerns involving the Director General for Health and Social Services / NHS Wales within the last 12 months.

1.Complaints About Conduct (Last 12 Months)

- Details about any complaints formal and informal in relation to the conduct of the Director General for NHS Wales in the last 12 months

2. Impact on Staff & Culture (Last 12 Months) Staff survey results

- Any survey or engagement data referencing bullying, intimidation, or leadership culture concerns.
- Exit interview themes; anonymised summaries of exit interview comments referencing conduct or leadership issues.
- Working relationship breakdowns : Any recorded breakdowns in working relationships involving the Director General.

3. Handling of Complaints (Last 12 Months): Investigation process.

- Please provide the detail on how allegations against the Director General are investigated.
- Are there any instances where the Director General stepped back from duties due to conduct concerns.

4. Outcomes & Actions (Last 12 Months)

- Investigation outcomes: Anonymised outcomes of all complaints.
- Actions taken: Any actions or interventions taken as a result.

5. External Scrutiny (Last 12 Months)External referrals

- Number of complaints referred to Audit Wales, Health Inspectorate Wales, the Civil Service Commission, or the Police
- Ministerial briefings; anonymised ministerial briefings referencing concerns about the Director General's conduct or leadership culture.

6. Civil Service Code & Ethical Standards (Last 12 Months)

- Code breaches: Any findings of breaches of the Civil Service Code

Annex B

Application of exemptions/exceptions

The Freedom of Information Act/Environmental Information Regulations provide 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.

I have decided that all of your request falls within the scope of Section 40(5) of the Freedom of Information Act 2000 and therefore the duty to confirm or deny does not arise. You do ask for anonymised data, however this does not resolve the issue as the request is framed around a named individual and confirmation/ denial would itself disclose personal data.

This Annex sets out the reasons for the engagement of section 40(5) of the Freedom of Information Act.

Engagement of section 40(5) – Personal Data

Section 40(5) of the Freedom of Information Act 2000 (FOIA) provides that the duty to confirm or deny whether information is held does not arise where doing so would itself contravene 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. I have concluded that this relates to the name (and other associated personal information) of the Welsh Government employee referenced in your correspondence.

Under section 40(5)(b) of the FOIA, the duty on a public authority to confirm or deny that it holds recorded information caught by a request does not arise if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

- (i) would contravene any of the data protection principles,

The duty to confirm or deny does not arise under this section of the Act if confirming or denying whether the requested information is held would breach any of the data protection principles contained in Article 5 of the UK GDPR. It is our opinion that to confirm or deny we hold any recorded information caught by this request would be

placing personal data into the public arena in contravention of the data protection principles. 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) of the UK GDPR. 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:

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;
3. 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 Test

The Welsh Government recognises that there is a legitimate interest in transparency and accountability in relation to the conduct of senior public officials, and in understanding whether concerns about workplace culture, bullying, harassment or leadership are handled appropriately and in accordance with relevant policies and procedures.

2. Is disclosure necessary?

The Welsh Government does not consider that confirming or denying whether information is held is necessary to meet the legitimate interest identified above. The legitimate interest in understanding how such matters are handled can be met through less intrusive means such as general policies and procedures that apply to these types of concerns, without confirming whether any such information is held in relation to a specific individual. Confirming or denying whether information is held would go beyond what is necessary as it would itself reveal personal information about the individual named in the request.

3. The Balancing Test

The Welsh Government has carefully weighed the legitimate interest in transparency and accountability against the rights and freedoms of the individual named in the re-

quest. The information requested, if held, would relate to that individual's employment affairs. Such information attracts a strong expectation of privacy, particularly where it concerns unproven allegations or internal employment processes.

In addition, even confirming or denying whether information is held would disclose something meaningful about the individual, namely whether records of the type described in the request do or do not exist. The fact that you are requesting anonymised information does not remove this concern, because the request expressly identifies the individual concerned. As disclosure under FOIA is disclosure to the world at large, confirming or denying whether such information is held would create an unjustified intrusion into the individual's privacy.

On balance, the Welsh Government considers that the individual's rights and freedoms, including their reasonable expectation that employment-related matters will remain confidential, override the legitimate interest in confirmation or denial.

For these reasons, the Welsh Government considers that confirming or denying whether information of the type requested is held would not be lawful under Article 6(1)(f) of the UK GDPR. No other lawful basis is considered to apply. Confirming or denying whether the information is held would therefore breach the first data protection principle. Accordingly, under section 40(5)(b)(i) of FOIA the Welsh Government is not required to confirm or deny whether it holds the requested information. The Information Commissioner's office is of the view that Section 40(5), is an absolute exemption and is not subject to the FOIA public interest test.