



Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru
Care and Social Services Inspectorate Wales

Sent by email to:

Eich cyf/Your ref
Ein cyf/Our ref ATISN 10066

Dyddiad / Date: 04/01/2016

Dear

ATISN 10066

I am writing with regards to your request for the identity of the person who contacted CSSIW and raised concerns in relation to you minding children without the appropriate CSSIW registration.

The Welsh Government handles requests for recorded information such as yours under the Freedom of Information Act, meaning that we have to consider disclosure of the requested information to the wider world, not just you as the requester.

Whilst I can confirm that CSSIW holds this information, I have decided that it is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at annex 1 to this letter.

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: FreedomOfInformationOfficer@wales.gsi.gov.uk

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

Section 40(2)

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

It's important to note that, an individual requester's interests notwithstanding, requests under the Freedom of Information Act are treated as 'applicant blind' and the response is made to the world at large. With this in mind, we have concluded that, in this instance, the information requested is third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that the identity of an individual raising a concern with CSSIW clearly falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

- 1 Personal data shall be processed fairly and lawfully and
- 2 Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office (ICO) (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *If disclosure would not be fair, then the information is exempt from disclosure.*

CSSIW offer anonymity to persons raising concerns with them, meaning that where the contact's details are known, these will not be disclosed to any third party unless there is a

necessary and legitimate interest in doing so. In this instance, we do not believe the release of this information to be necessary and the data subject would have no expectation that this information would be placed into the public domain. Thus, we believe release of this information would be unfair and so breach the first data protection principle.

In the context of individuals raising concerns with public authorities with the remit to investigate, ICO Decision Notice FS50575510 dated 27 April 2015 states (at para 24-25):

24. The Commissioner has considered what might be the reasonable expectations of the Informant that his or her identity would be put into public domain by virtue of a request made under the provisions of the FOIA.

25. The Commissioner considers that anyone making a complaint to a public authority would do so with the expectation that their details – including their identity, would not be made public to the extent that they could be identified. He considers that the majority of persons would expect their complaints to be treated in confidence unless there is a necessary and legitimate interest that would warrant otherwise.

For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.