



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

Eich cyf/Your ref
Ein cyf/Our ref ATISN 10597

Dyddiad / Date: 17/08/2016

Dear

ATISN 10597

Thank you for your request which I received on 21/07/2016. You asked for:

- All communication and documentation [electronic and hard copy] relating to Ty Ddol Awel Care Home run by Integra Living Options at 2 Ddol Road, Dunvant, Swansea.

You asked for this information for the last 3 years. Based on the date the request was received CSSIW have determined this to mean between 22nd July 2013 and 21st July 2016.

CSSIW identified and considered sixty-one pieces of communication and documentation which fall within the above description.

A copy of the information I have decided to release is enclosed.

Consideration is still being given to whether two of the documents identified can be released. We will issue a subsequent response in relation to these documents as soon as possible.

I have not released nine of the documents identified and have made redactions to a further seven documents as I have decided that this information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. I have also not released three of the documents identified as I have decided that this information is exempt from disclosure under section 22 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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)

CSSIW have withheld nine documents and have redacted information from a further seven documents under section 40(2) of the Freedom of Information Act. This is because we have determined this information to be the personal data of residents of the home, staff and third parties who have had contact with the service.

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.

We have concluded that, in this instance, the information requested contains 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.

The first data protection principle.

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 withheld information 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 (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.*

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

In this instance, we believe the data subjects would have no expectation that this information would be shared with anybody. Thus, we believe release of this information would be unfair and so breach the first data protection principle. 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.

Section 22

Section 22 of the FOIA says that information is exempt if, at the time a public authority receives a request for it:

- the public authority holds it with a view to its publication;
- the public authority or another person intends to publish the information at some future date, whether determined or not; and
- in all the circumstances it is reasonable to withhold the information prior to publication.

Three of the documents identified for your request relate to the planning and drafting of the report for a current, ongoing inspection. As far as the first two bullet points above go, I can confirm that this information will be published and available on CSSIW's website once the inspection process is complete.

The purpose of our reports is to make people who use or intend to use services and service providers aware of our inspection findings. Releasing a report into the public domain which is not final may not provide a full and accurate view of our findings and lead to individuals forming a false view of the service. Therefore, CSSIW consider it is reasonable that inspection reports are withheld until such a time that they are satisfied that they are factually accurate and can be of benefit to the intended audience.

Whilst we recognise there is public interest in the disclosure of this information, and this is reflected by our intention to publish this information in the future, as the inspection process is not yet complete the information currently available would not provide a full and accurate view of the service at this time. To release a report which is not final may cause service users and perspective service users to form a false view of the service which may result in them not selecting the service which best meets their needs.

We believe that the public interest is best served by releasing inspection reports when the inspection process has been completed. This ensures that the report provides a full and accurate evaluation of the service based on facts and evidence.