



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

Sent by email to:

Eich cyf/Your ref  
Ein cyf/Our ref

Dyddiad / Date: 06/10/216

Dear ,

Thank you for your request for information in which you ask for the names of all CSSIW employees who were involved in your case which resulted in a referral to the NMC.

In the absence of any other legal obligation, the Welsh Government is obliged to handle requests for recorded information under the Freedom of Information Act (FOI Act). Responses under that Act are made to the world at large rather than any individual requestor.

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.

I understand that you have submitted a formal complaint to CSSIW and are in communication with Ken Redman, Area Manager, regarding this. The investigation of any complaint will consider whether staff have acted properly in discharging their responsibilities. If any part of your complaint is specific and directed at the actions taken by an individual member of staff, their name may be disclosed to you during the complaint process.

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,

AGGCC  
Swyddfeydd Cenedlaethol  
Llywodraeth Cymru  
Adeiladau'r Llywodraeth  
Parc Busnes Rhydycar  
Merthyr Tudful CF48 1UZ  
www.aggcc.org.uk

☎ 0300 00  
☎ 0300 0628548  
✉ [cssiw@cymru-wales.gsi.gov.uk](mailto:cssiw@cymru-wales.gsi.gov.uk)

CSSIW  
National Office  
Welsh Government  
Government Buildings  
Rhydycar Business Park  
Merthyr Tydfil CF48 1UZ  
www.cssiw.org.uk

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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.

CF10 3NQ

or Email: [FreedomOfInformationOfficer@wales.gsi.gov.uk](mailto: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

Regulatory work is undertaken by CSSIW staff in their capacity as employees of Welsh Government. Actions taken and decisions made are attributed to CSSIW/WG, not to the individual. With this in mind, we have concluded that, in this instance, the information requested is third party personal data and is therefore exempt from disclosure under Section 40(2) of the Freedom of Information Act.

### 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.

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 released into the public domain in this context. 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.