

Your ref:  
Our ref : ATISN 11285

26 May 2017

Dear ,

### **ATISN 11285 – Hergest Inspection Report – 21 to 23 August 2012**

Thank you for your email to Natalie Jones on 9 May 2017 regarding the Hergest inspection report following a Mental Health Act Monitoring Visit on 21 to 23 August 2017. In your email, you asked for further clarification on the following information that was redacted from the Hergest Report that was sent to you on 9 May 2017:

1. The details of patients' ages
2. Information deemed relevant

An acknowledgment was sent to you on 17 May 2017 and a request for further clarification relating to item 2 above. A response was not received, however, a review of the information that was previously redacted in the Hergest report has been undertaken and I am now able to release the following information:

- Page 8, Paragraph 2:18. All patients on the ward were 18 years old or over.
- Page 8, Paragraph 2:20. The ward's fixtures and fittings appeared old and poorly maintained. Staff reported long periods between basic maintenance requests being made and the completion of work.
- Page 13, Paragraph 2:47. All patients on the ward were aged between 18 and 65 years old.
- Page 18, Paragraph 2:73. Five of patients on the ward were aged between 18 and 65 years old.

In some paragraphs individual patient details remain redacted as well as any information which could specifically highlight any safety concerns. This information remains redacted as I consider that these patients' identities are exempt from disclosure under Section 40(2) of the Freedom of Information Act 2000 and we consider the safety concerns are exempt from disclosure under Section 38 (1). I have set out my reasons in detail in Annex A.

The request you sent me contains personal data about you - for example, your name and email address. I will only use this personal data in accordance with the Data Protection Act 1998 to deal with your request and any matters which arise as a result. I will keep your personal data and all other information relating to your request for three years from the date on which your request is finally closed. Your personal data will then be disposed of securely.

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 this response. Request 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](mailto:FreedomOfInformationOfficer@wales.gsi.gov.uk).

Please remember to quote the ATISN reference number: 11285

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Officer  
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 the Welsh Government's own internal review process.

Yours sincerely

## Annex A

**Section 38(1) Health and Safety** of the Freedom of Information Act provides an exception for information which could specifically highlight safety concerns and may potentially

- a) endanger the physical or mental health of any individuals, or
- b) endanger the safety of any individual.

The reports include examples based on our observations of the circumstances of safety issues which we use to illustrate the reasons for our recommendations. The information could specifically highlight safety concerns and may potentially endanger the physical, mental health or safety of any individuals and for these reasons some information have been redacted.

**Section 40(2) Personal information** of the Freedom of Information Act provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act (DPA). The first data protection principle has two components:

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

The reports include examples based on our observations of the circumstances of individual patients which we use to illustrate the reasons for our recommendations. These examples are personal data. The release of which could be unfair because:

- Our approach to conducting Mental Health Act inspections, involving observation of patients and discussions with them, does not lead them to believe that their personal data will be made public
- Patients in mental health wards, especially those deprived of their liberty because they lack the mental capacity to make decisions, will be unable to make informed decisions about consenting to provide personal data, or what personal data to provide, to our inspectors

Thus, I do not believe that processing of this information would be 'fair' within the meaning of the first data protection principle, particularly as such processing would not be in the reasonable expectations of the individuals in question.

The "*The exemption for personal information*" Guidance from the Information Commissioner's Office (dated March 2011) states:

*"We suggest that the starting point is to consider whether the disclosure of the personal information is fair. Where the conclusion is that the disclosure would be unfair, and so in breach of the first principle, this would be the end of the matter and the information would not be disclosed".*

For the reasons set out above, we believe that processing this data would breach the first data protection principle as it would not be fair. As a result, this information has been withheld under Section 38(1) and Section 40(2) of the Freedom of Information Act.