

5 October 2017

Dear ,

ATISN 11572- Request for Recorded Information

Thank you for your request for information which I received on 10 September 2017.
You requested;

- Regarding the year and course of another ReAct participant by the name of X Y who attended Coleg Qs.

I can confirm that I am unable to disclosure any of the requested information, as this is exempt from disclosure by virtue of s40(2) of the Freedom of Information Act (FOIA). Full details of the application of this exemption is set out in the annex to the 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.

Annex

Information released in response to a FoI request is released to the World at large and not just to the person making the request. As such, we need to consider whether the information should be placed into the public domain or not. Any personal interest the requester may have in being provided with the information is largely irrelevant as it is the effect of disclosure to the World and the likely use that that information will be put to by any person that needs to be taken into consideration.

Section 40(2) – Personal Data

Section 40 of the FOIA 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.

The information sought would, we believe, greatly increase the likelihood that the individual would be identified. Whilst disclosure of the individuals name would not allow the individual to be identified, there being in excess of 100 individuals with that name within the local area, disclosure of more details of that individual, such as the dates they attended collage or the course they attended, would narrow down the list of potential individuals to the extent that there would be a increased chance the individual could be identified.

I have concluded that, in this instance, the information requested contains third party personal data. Under Section 40(2) of the FOIA, 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.

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).

When this individual undertook a course of study at the College, they would have had no expectation that their attendance at the college would become a matter of public scrutiny at some future point. We consider that this individual would have had no reasonable expectation that their information would be disclosed to the public at large. As there would have been no expectation that their personal data would be placed into the public arena, we believe it would be unfair on this individual for their personal data to be made public simply as a result of a FoI request.

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 FOIA. This is an absolute exemption and not subject to the public interest tests.