

Ein cyf / Our ref: ATISN 11990

Dyddiad / Date: 22/02/2018

Dear ,

ATISN-11990: Request for Information

Thank you for your request which we received on 26/01/2018 for information regarding The Cottage Nursing Home.

You requested a copy of all complaints of abuse and negligence about The Cottage Nursing home in the last two years.

Care Inspectorate Wales do not have any records of complaints of abuse or negligence made against The Cottage Nursing Home in the last two years. The only concern of possible abuse or negligence raised with us was in October 2016. We have provided a summary of this concern below, however, we have decided that a copy of the full detail of this concern as received by Care Inspectorate Wales is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld as we believe that, even if anonymised, this information could still identify the third party individuals concerned and that removing any personally identifying information from the document would leave it relatively meaningless. The full reasons for applying this exemption are set out at Annex 1 enclosed.

Summary of the concern raised with Care Inspectorate Wales in October 2016:

Care Inspectorate Wales was notified by Flintshire Local Authority in October 2016 that an individual had raised concerns with them in relation to a resident at the Cottage Nursing Home. The concerns were dealt with through the Local Authority Safeguarding procedures. At the subsequent inspection of the Cottage Nursing Home in January 2017, CIW did not find any evidence of abuse or negligence.

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Care Inspectorate Wales (CIW)
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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.

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

We have decided to withhold the following information:

Information being withheld	Section number and exemption name
A copy of the document received by CIW which details concerns raised with the Local Authority by an individual in relation to The Cottage Nursing Home	Section 40(2) of the Freedom of Information Act. Personal data protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA.

This Annex sets out the reasons for the engagement of **Section 40(2) of the Freedom of Information Act** relating to 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 the information contained within this document amounts to sensitive 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.

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. 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

Further, the second data protection principle states:

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

We believe that the information contained in this document, even if anonymised, could still identify the data subject. Thus, we believe release of this information would be both unfair so as to breach the first data protection principle, and also that the publishing of this information in the public domain would be incompatible with the purpose for which the information was originally obtained. We also believe that removing any personally identifying information from this document would likely leave it relatively meaningless.

For these reasons, the information is being withheld under section 40(2) of the Freedom of Information Act and we have instead provided a summary of this information only. This is an absolute exemption and not subject to the public interest tests.