

Dear

ATISN 13569 – Request for information in relation to Osbourne Lodge Day Nursery and Care Inspectorate Wales.

Thank you for your request which we received on 04/11/2019. You asked for:

1. Air quality reports and building control reports in relation to Osbourne Lodge Day Nursery and the names of the building control officers.
2. All notes on Osbourne Lodge Day Nursery.
3. CIW Inspector's qualifications.
4. The names of the CIW Inspectors who have inspected Osbourne Lodge Day Nursery.

I will respond to each point of your request in turn.

Point 1

We have previously provided this information to you under ATISN 13507. As it is a repeat of an earlier request we can refuse to take this part of your request forward under s14(2) of the Freedom of Information Act, 2000 (FOIA). This section of the FOIA allows public authorities to refuse to comply with a request for recorded information where that authority has previously complied with a request for the same, or substantially similar, information from the same individual.

Point 2

This part of your request is not sufficiently clear to enable us to locate the information required. We wrote to you on 13/11/2019 to ask you to clarify this part of your request. We have not received a response to this and we are therefore unable to address this part of your request.

Point 3

CIW Inspectors are required to hold a relevant degree level qualification such as Social Work, Degree in Early Years / Childhood Studies, degree in Education e.g. B.Ed / BA Primary Education and also a PGCE qualification, Nursing or Allied Health Professional degree (or a recognised predecessor qualification). We will also accept the RCSA award and applications from Social Care Managers with a Level 5 Diploma in Leadership for Children's Care, Learning and Development.

Point 4

Section 21 of the Freedom of Information Act 2000 states that information is exempt from disclosure if it is reasonably accessible to the applicant by other means. The names of the inspectors who carried out the inspections of Osbourne House Nursery prior to 2013 are contained within the inspection reports that we provided copies of to you on 01/11/2019. This information is therefore accessible to you by other means and so we are not required to provide this to you again.

After 2013 CIW took the decision to no longer publish Inspector's names within inspection reports as whilst individual inspectors may carry out inspections, they do so on behalf of CIW and the findings as expressed in the reports are CIW's. We have therefore decided that this information is exempt from disclosure under section 40(2) of the Freedom of Information Act and so is withheld. The reasons for applying this exemption are set out in full at Annex 1 to this 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: Freedom.ofinformation@gov.wales

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

ATISN 13569 - Request for Information

Care Inspectorate Wales has decided to withhold the following information:

Information being withheld	Section number and exemption name
The names of the Inspectors who carried out the inspections of Osbourne Lodge Day Nursery.	Section 40(2) of the Freedom of Information Act. Personal data protected by the Data Protection Act 2018 (DPA).

This Annex sets out the reasons for the use of Section 40(2) of the Freedom of Information Act.

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 2018 ('the DPA 2018') and means any information relating to an identified or identifiable living person. An identifiable living person is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested amounts to 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 set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

"processed lawfully, fairly and in a transparent manner in relation to the data subject"

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data".

In considering the use of Article 6(1)(f) in the context of a FOIA request it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

While your own legitimate interests are unknown, we accept that the general requirement for transparency and accountability in public life implies a potential legitimate interest. However, accountability for the findings of an inspection rest with CIW, not with individual inspectors.

2. Is disclosure necessary?

CIW do not believe disclosure of the names of inspectors is necessary to promote transparency or accountability. The inspection reports are available and, should there be any concern with any aspect of them, there is a complaints procedure available that can be followed and used to initiate an investigation into concerns about the conduct of inspectors.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

As stated above, since 2013 there has been no expectation on the part of inspectors that their names would be made public in the context of specific inspections or investigations. As legitimate interests regarding openness and transparency are satisfied by other means, we do not believe they outweigh the rights and interests of the data subjects (the inspectors). Consequently, the release of this information would not be fair under the first data protection principle

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful or fair within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.