

Annex 1

Please find below the information you requested in relation to parts 1-3 of this request.

Note: You requested a breakdown of this information according to the Group structure outlined at [Welsh Government organisation chart](#). This chart relates to a new organisational structure introduced on 1st April 2022. As your information request covers the time period 2017-2021, I have only been able to provide a breakdown aligned to the Group structures that were in place during this timeframe. I have however provided a mapping of the current and former business areas to guide you. Future information on staff interests that the Welsh Government collects/publishes will be aligned to the new Group structures.

Current Group Structure	Previous Group Structure
Health & Social Services	Health & Social Services (HSS)
Climate Change and Rural Affairs	Education, Skills & Natural Resources (ESNR)
Education, Social Justice and Welsh Language	Education & Public Services (EPS)
Economy, Treasury and Constitution	Economy, Skills & Natural Resources (ESNR)
Chief Operating Officer	Permanent Secretary's Group (PSG) / Office of the First Minister (OFM)
Covid Recovery & Local Government	Education & Public Services (EPS)

1. Please disclose how many senior civil servants in the Welsh Government were employed by another company/body whilst in the employment of the civil service in each of the following years:

- a. 2017
- b. 2018
- c. 2019
- d. 2020
- e. 2021

	HSS	PSG/OFM	ESNR	EPS
2017	3	0	0	0
2018	3	0	0	0
2019	3	0	0	0
2020	2	0	0	0
2021	2	0	0	0

2. In each case identified in the response to Q1a-e, please provide a list of the names of the companies/bodies who employed your staff in these years.

	HSS	PSG/OFM	ESNR	EPS
2017	<ul style="list-style-type: none"> • European Commission • Hywel Dda UHB • Cardiff & Vale UHB 	N/A	N/A	N/A

	<ul style="list-style-type: none"> Cardiff Health Access Practice (CHAP) at Cardiff Royal Infirmary 			
2018	As above	N/A	N/A	N/A
2019	As above	N/A	N/A	N/A
2020	<ul style="list-style-type: none"> European Commission Hywel Dda UHB Cardiff & Vale UHB 	N/A	N/A	N/A
2021	As above	N/A	N/A	N/A

3. Please disclose how many violations of civil service conflict of interest regulations in relation to such employments' (either Civil Service Code violations or breaches of departmental rules on conflict of interest) by senior civil servants in the Welsh Government were recorded in each of the years:

- a. 2017
- b. 2018
- c. 2019
- d. 2020
- e. 2021

	HSS	PSG/OFM	ESNR	EPS
2017	None	None	None	None
2018	"	"	"	"
2019	"	"	"	"
2020	"	"	"	"
2021	"	"	"	"

Annex 2

Section 22 – Information Intended for Future Publication

Section 22 states that *Information is exempt information if –*

- a) The information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)*
- b) The information was already held with a view to such publication at the time the request for information was made, and*
- c) It is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph a).*

I am of the opinion that subsections (a) and (b) above are met because the information is held with a view to its publication. This information will be published on the [Civil service conflicts of interest register | GOV.WALES](#) and the [Senior officials: register of interests | GOV.WALES](#)

With regards to part (c), I have given consideration as to whether it would be ‘reasonable in all the circumstances’ that the information should be withheld from disclosure until the proposed publication date. I am of the opinion that releasing the information at this time would cause disruption to the Welsh Government’s intentions in relation to its publication arrangements. Thus I am content that the exemption is engaged.

Section 22 is a public interest exemption. This means that, in order to withhold information, I must show that the public interest in withholding is greater than the public interest in releasing it. In terms of the public interest, it is recognised that there is public interest in there being openness and transparency within Government.

The Welsh Government has committed to publishing a list of the interests of senior officials in order to fulfill its obligations under section 6.4.3(e) of the Government Financial Reporting Manual. The Welsh Government also routinely publishes details of its staff who hold external board and committee memberships. Arrangements for processing the subsequent publication of these registers are already underway, in the normal course of business. An accelerated release of the information, without it going through the necessary approvals process, might result in inaccurate, unchecked information being disclosed prematurely, misleading the public.

To that end, I do not think it is reasonable in all the circumstances or in the public interest to release this information prematurely. Rather, I believe the public interest would be best served if the information were released as scheduled on the Welsh Government website. I am satisfied therefore that the balance of the public interest falls in favour of withholding the information.

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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 1998 (‘the DPA 2018’) and means any information relating to an identified or identifiable living

individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular 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. I have concluded that this relates to the names as well as unpublished details of the personal or financial interests of senior civil servants that you have requested.

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. I 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 particular where the data subject is a child”.

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

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

My consideration of these tests is set out below:

1. Legitimate Interest Test

The Welsh Government recognises there may be a legitimate interest in the personal or financial interests of senior civil servants. However information that is not intended for publication is shared in confidence with Group Directors and/or the Permanent Secretary in order to ensure that senior staff do not use their official positions to further their personal or financial interests (or those of close family members). I do not believe, there is any legitimate reason why this unpublished personal data would need to be released to the wider world as part of a disclosure under the Freedom of Information Act.

2. Is disclosure necessary?

In this instance, because most senior civil servants (with the exception of Welsh Government Board and Executive Committee members) have shared information of a personal or financial nature (including in some cases the personal or financial interests of close family members) **in confidence**, I believe that they and their family members would have no expectation that this information would be made public. Thus, I 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.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, 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 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.