

Date: 11 May 2023

Dear

FOI Request - ATISN

Thank you for your request which I received on 11 April 2023. You asked for the names of the Equality Branch members redacted in all of the published minutes of the meetings the Expert Panel held to discuss the LGBTQ+ Action plan and its consultation.

Our response

Freedom of Information Act 2000: Section 40(2)

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 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.

We 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 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 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:-

- **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

Individual civil servants who took part in this meeting have not been asked for permission to use their personal information in the published minutes prior to participation in the meetings in question, and as such have not provided the consent necessary for Welsh Government to use information it holds on those individuals in this way.

While there is legitimate interest in the policy positions of Government in relation to the subject of these meetings, these policies may be represented in a particular meeting with stakeholders external to Government by any civil servant on the policy team, or by more senior civil servants who have been fully briefed by the policy team.

The identity of those civil servants is not pertinent to the policy position taken by Government as, according to the Civil Service Code¹, must base “advice and decisions on rigorous analysis of the evidence”.

If the identity of individual civil servants is not pertinent to the business carried out in the meeting, or the decisions or actions arising from it, there can be no legitimate interest in knowing their identity.

2. Is disclosure necessary?

The minutes of a meeting are a record of the discussions that took place within the meeting and the decisions and actions that arose from it.

While there may be an interest in what positions individual organisations or participants adopt if they are in opposition to Government Policy, the presentation of Government positions in a meeting will not depend on the private positions of individual civil servants who are bound by The Civil Service Code to act “solely

¹ [The Civil Service code - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

according to the merits of the case and serving equally well governments of different political persuasions”

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

Providing the names of individual civil servants in the area of LGBTQ+ policy, particularly where that policy is potentially controversial, has the potential to put those individuals at risk.

We are aware that individual civil servants have been targeted on their personal social media accounts by individuals and groups who are opposed to work they are carrying out on behalf of the Government. In some cases, further personal details such as home addresses that might put someone in physical danger have been revealed online after an individual’s identity has been established.

Such intrusive and upsetting attacks on individuals are not acceptable, and the duty of care as an employer requires Welsh Government to avoid actions which might put individual members of staff at unnecessary risk.

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

Next steps

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: Freedomofinformation@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