

23 October 2023

Dear

Reference - ATISN 19094 - Singleton Hospital Maternity Services - Swansea Bay University Health Board

Thank you for your email received on 29 September 2023 requesting a copy of the immediate assurance letter that was issued to Swansea Bay University Health Board on 11 September 2023, following the maternity inspection at Singleton Hospital. A response to your information request is provided below.

Please find attached Document 1, which contains information held by HIW that is captured by your request.

We have decided that certain information is exempt from disclosure. Our application of the various exemptions is set out in Annex A to this response.

Information being withheld	Section number and exemption name
Appendix A - Immediate improvement plan	Section 22 Information intended for future publication. (1) 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 when 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).
Third party personal data in the form of contact details relating to staff within HIW and Swansea Bay UHB	Section 40(2) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.

HIW operates within the Welsh Government's framework for handling Freedom of Information requests. 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

Enclosure: Freedom of Information Request - ATISN 19094 - Information captured by request - Attachment 1

Annex A

This Annex sets out the reasons for the use of the exemptions as outlined in the response.

Section 22 - Information intended for future publication

Section 22 provides an exemption for information that is intended to be published in the future. Information is exempt if, at the time when the public authority receives a request for it:

- the public authority holds the requested information;
- the public authority intends the information to be published at some future date, whether that date is determined or not;
- and in all the circumstances it is reasonable to withhold the information until its planned publication.

It is a qualified exemption and therefore public authorities must consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the requested information.

HIW confirms that it holds the information requested and as per its well-established inspection processes, intends to publish the information at a future date. It is therefore reasonable to withhold the information until its planned publication.

Section 22 is a qualified exemption. This means that, even if the requested information falls within it, the public authority must go on to consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the information. Where the public interest is equally balanced, the authority must disclose the requested information.

The information requested falls within HIW's well-established inspection processes. The process requires the information to be subjected to a series of quality assurance checks prior to its publication. Releasing the information ahead of the intended publication date could both prejudice the findings of the inspection and lead to misrepresentation to the public. HIW has therefore decided that maintaining the exemption is greater than the public interest in disclosing the information, recognising that the information will be published at a later date.

Section 40(2) - Personal Information

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 (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, by reference to an identifier such as a name, an identification number, location data, an

online identifier or 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 concerns 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 General Data Protection Regulation (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

Whilst we recognise the legitimacy in openness and transparency that release would engender, it's important to note that releases under the Freedom of Information Act (FOIA) are made 'to the world' and published on our disclosure log. However, we do not believe the release of personal data is legitimate.

2. Is disclosure necessary?

We do not believe disclosure of third-party personal data into the public domain is necessary in this case.

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

Although we do not believe the disclosure to be 'necessary' in this context, we also believe that the 'fairly' requirement of the above principle would not be satisfied in that any individuals caught by the request would have no reasonable expectation that their personal information would be put into the public domain. Thus, we believe release of this information into the public domain would be unfair and incompatible with the purpose for which the data was originally obtained. 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.