

Dear

**Reference - ATISN 19095 - Swansea Bay University Health Board - Maternity Services**

Thank you for your email received on 29 September 2023 requesting the following information:

- *A copy of all emails / teams messages within Welsh Government about maternity care in Swansea Bay Health Board.*
- *A copy of all emails between Welsh Government and Swansea Bay NHS about maternity care in Swansea.*
- *Same as above but between HIW and Welsh Government*
- *Both of the above need to be since 1st august 2023*

*Also please release:*

- *any records held by Welsh Government relating to maternity in Swansea since 1st august 2023*

A response to your information request is provided below.

Please find attached Documents, which contains information held by Welsh Government and 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
Information pertaining to our frontline assurance activity that will be published in the future	<p><b>Section 22 Information intended for future publication.</b></p> <p>(1)Information is exempt information if</p> <p>(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),</p> <p>(b)the information was already held with a view to such publication at the time when the request for information was made, and</p> <p>(c)it is reasonable in all the circumstances that the information</p>

	<p>should be withheld from disclosure until the date referred to in paragraph (a).</p>
<p>Information obtained in the line of our inspection and assurance activity</p>	<p><b>33 Audit functions.</b></p> <p>(1) This section applies to any public authority which has functions in relation to—</p> <p>(a) the audit of the accounts of other public authorities, or</p> <p>(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.</p> <p>(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).</p> <p>(3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).</p>
<p>Third party personal data in the form of contact details relating to staff within HIW and members of the public.</p>	<p><b>Section 40(2) - Personal Information</b></p> <p>Section 40(2) of the Freedom of Information Act. Personal data protected by the General Data Protection Regulation and Data Protection Act 2018.</p>
<p>Information provided in confidence.</p>	<p><b>Section 41 - Information Provided in Confidence</b></p> <p>(1) Information is exempt information if—</p> <p>(a) it was obtained by the public authority from any other person (including another public authority), and</p> <p>(b) the disclosure of the information to the public (otherwise than under this Act)</p>

	<p>by the public authority holding it would constitute a breach of confidence actionable by that or any other person.</p> <p>(2)The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.</p>
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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](mailto: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

Enclosures:

1. Freedom of Information Request - ATISN 19095 - Information captured by request - Attachment 1
2. Freedom of Information Request - ATISN 19095 - HIW Action Plan Maternity SBU Update - Attachment 2
3. Freedom of Information Request - ATISN 19095 - Singleton Maternity Immediate Assurance Letter - Attachment 3

## 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.

### 33 Audit functions.

- (1) This section applies to any public authority which has functions in relation to—
  - (a) the audit of the accounts of other public authorities, or
  - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.
- (2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

- (3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

The role of HIW is to inspect and regulate healthcare, thus examining the economy, efficiency and effectiveness of those organisation in discharging their functions. HIW believes that if it were to share information obtained through its powers to inspect and regulate healthcare, it could lead to those organisations being less open with us in the course of our work. This in turn could prejudice our findings.

### **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.

## Section 41 - Information provided in confidence

Section 41 provides an exemption to the right of access under the Freedom of Information Act if release would be an actionable **breach of confidence**. This exemption qualifies the right of access under Freedom of Information Act by reference to the common law action for 'breach of confidence'.

A breach will always be actionable if:

- the information has the necessary quality of confidence;
- the information was imparted in circumstances importing an obligation of confidence; and
- there was an unauthorised use of the information to the detriment of the confider (the element of detriment is not always necessary).

Information that is being withheld under this exemption has been shared with us to enable us to conduct investigations on their behalf. In all cases, the individual has either specifically requested that the information be kept confidential, or the nature of the information leads us to determine that the information should be kept confidential in order to protect the anonymity of the sender. Release of such information into the public domain could result in the individual being identified and they could experience adverse effects as a result, which would be to the detriment of the confider.