

11 December 2023

Dear

### **ATISN 19280 – Information Security**

Thank you for your email received on 13 November 2023 which will be dealt with under the Freedom of Information Act (2000). You requested the following:

- 1. What assessment of the implications of the Data Protection and Digital Information Bill for NHS and social care in Wales has the Welsh Government undertaken?*
- 2. What assessment has the Welsh Government made of the Goldacre Review on digital security and data protection and its implications for the NHS and social care in Wales. Which, if any, of his recommendations will Welsh Government be taking up?*
- 3. What platforms are used to store and access NHS and social care data in Wales? Who provides them and what governance is there for these purposes?*
- 4. What role, if any, will 'Trusted Research Environments' play in protecting personal health and social care data in Wales.*
- 5. What principles and values will inform the establishment of any secure data environments and 'data sharing partnerships' in Wales?*
- 6. What role, if any, will private sector providers play in the provision of secure data environments and 'data sharing partnerships' in Wales.*

### **Our Response**

1. We have concluded that the information requested is exempt from disclosure under the following section of the FOIA: Section 35(1)(a) Information held by a government department or by the Welsh Government is exempt information if it relates to: (a) the formulation or development of government policy.  
An explanation of our application of this exemption and the public interest test is set out at the Annex 1 to this letter.
2. The Digital Policy and Delivery function of Health and Social Services Group has not undertaken a formal assessment of the Goldacre review. Policy officials do however engage in meetings with the four nations to understand how the elements of the review is being implemented in England.
3. We do not hold information on this question and advise this element of the query be redirected to Digital Health and Care Wales ([www.dhcnhs.wales/about-us/](http://www.dhcnhs.wales/about-us/))

4. Welsh Government, via Health and Care Research Wales, has funded the Secure Anonymised Information Linkage (SAIL) Databank since 2007 to provide Trusted Research Environment capabilities for health and social care research in Wales. The SAIL Databank has the highest levels of accreditation for providing secure access to anonymised linked data and is recognised as part of the Goldacre Review as a leading example of safe, effective use of data for supporting research activity. For further detail, we advise that this query be redirected to the SAIL Databank ([www.saildatabank.com](http://www.saildatabank.com)). We also advise contacting The National Data Resource (NDR) Programme in Digital Health and Care Wales for information on measures taken to protect patient information in the NDR.
5. The refreshed Digital and Data Strategy for Health and Social Care in Wales (<https://www.gov.wales/digital-and-data-strategy-health-and-social-care-wales.html>) sets out the high-level principles and aims underpinning future digital and data initiatives in Wales.
6. The refreshed Digital and Data Strategy for Health and Social Care in Wales (<https://www.gov.wales/digital-and-data-strategy-health-and-social-care-wales.html>), launched July 2023, sets out the ambition to engage, where appropriate, in partnerships across providers and services in order to provide and support care for citizens. This Strategy provides the framework for local and national strategic decisions around planning and delivery of services.

### **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: [Freedom.ofinformation@gov.wales](mailto: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**

### **Engagement of Exemptions**

When considering the release of information captured by a request we are required to consider the potential effects of disclosure of the information to the wider World. This is because information released in response to a FoI request is released to the world, not just to the person submitting the request. As such we need to take into account how any other individual may use, or misuse, the information if it is placed into the wider public domain. So whilst the request may have a legitimate, and benign, interest in accessing the requested information, we could conclude that the risk that the information could be misused by others is more compelling and thus the information should be withheld.

### **S35(1)(a) formulation of government policy**

Section 35(1)(a) covers any information relating to the formulation or development of government policy. The information requested is information generated to inform the formulation of policies with regards to the Data Protection and Digital Information Bill. Discussions are still ongoing between Welsh Government and UK Government and disclosure at this stage may adversely affect these discussions.

As this is very much a 'live' issue, we are of the view that the s35(1)(a) exemption is engaged by the information captured by this request

The use of section 35(1)(a) is subject to a public interest test.

### **Public interest arguments in favour of release**

We understand that formulation of development of government policy with regards to the Data Protection and Digital Information Bill is of interest to the general public. It is important that public service activities carried out are appropriately transparent to provide assurance to citizens.

### **Public interest arguments in favour of withholding**

We take the view that the section 35(1)(a) is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options.

The withheld information relates to Welsh Government policy views on various provisions within the Data Protection and Digital Information Bill. It is important to note that the Data Protection and Digital Information Bill is still making its way through Parliament and as such is subject to change, and already has changed since the policy assessments were undertaken. Therefore, it is possible that the information held is already out of date.

As part of the formulation of this, we are heavily reliant on Government officials being able to provide advice and exchange views in an open and frank way, exploring various options as part of the normal working process. The Devolved Administrations, the UK Government and their officials need to be able to think

through and discuss all the implications of different options, be able to undertake rigorous and candid assessments in the knowledge that if different outcomes or conclusions are finally agreed, these assessments will not have more far reaching implications than appropriate. This should include the ability to receive information on a confidential basis or the candour of the engagement will certainly be weakened. Releasing the information that Welsh Government holds at this time may lead to significantly less considered and a less effective policy in this important area.

In addition, the disclosure of the information requested would have a prejudicial effect on engagement between the Devolved Administrations and the UK Government as it would remove the secure environment which allows Ministers and officials to gather information and discuss. Removing the secure environment in which officials are able to express views openly could result in advice being less robust as it would be likely to result in a reduction in the frankness and candour of those involved in the process if they believed discussions and other information would be made public.

## **Conclusion**

We believe that it is within the wider public interest to withhold the information related to this request in order to provide the government with a safe space to consider and live policy issues away from external intrusion. The Welsh Government endeavour to ensure they are as transparent as possible, in particular through the media, publication of documents, Ministerial Written Statements and public statements in the Senedd. We take the view that, on balance, this public interest has been satisfied and the information requested has been withheld under section 35(1)(a) of the Act for the reasons set out above.