

Dear

ATISN 20144: Request for Information regarding Ty Cariad Care Home and Care Inspectorate Wales (CIW).

Thank you for your request received on 29/01/2024. You asked for:

- 1. All notes relating to the inspection report for Ty Cariad that was carried out in November 2021.***
- 2. A copy of the notes on feedback and any evidence sent or received from Ty Cariad to CIW.***
- 3. CIW's policy on how we deal with conflicts of interests for people inspecting companies that they have previously worked for and how we prevent this from happening.***

Our response

We have considered your request under the Freedom of Information Act 2000. A copy of the information we have decided to release is enclosed. Some of the information requested is withheld.

- 1. All notes relating to the inspection report for Ty Cariad that was carried out in November 2021.***
- 2. A copy of the notes on feedback and any evidence sent or received from Ty Cariad to CIW.***

We have decided this information is exempt from disclosure under the following sections of the Freedom of Information Act and is therefore withheld:

Section 31 'Law Enforcement'
Section 41 'Information provided in confidence'
Section 40 'Personal Data'

Our reasons for applying these exemptions are set out in full at **Annex 1** to this response.

- 3. CIW's policy on how we deal with conflicts of interests for people inspecting companies that they have previously worked for and how we prevent this from happening.***

Care Inspectorate Wales are part of Welsh Government and as such follow the Welsh Government policy and guidance on conflicts of interests. A copy of the Welsh Government policy on Financial Dealings and Conflicts of Interest and the internal guidance on Conflicts of Interest, are enclosed.

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

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

Application of exemptions

The Freedom of information Act provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

We have decided to withhold the following information:

Information being withheld	Section number and exemption name
1. All notes relating to the inspection report for Ty Cariad that was carried out in November 2021. 2. A copy of the notes on feedback and any evidence sent or received from Ty Cariad to CIW.	Section 31(1)(g) - 'Law Enforcement' Section 41(1) 'Information provided in confidence' Section 40(2) 'personal data' of the Freedom of Information Act 2000

Section 31 'Law Enforcement'

Section 31(1)(g) of the Freedom of Information Act (FoIA) states:

Information which is not exempt from disclosure by virtue of section 30 (investigations and proceedings) is exempt information if its disclosure under the Act would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

Care Inspectorate Wales (CIW) main function is to register, inspect and take action to improve the quality and safety of services for the well-being of the people of Wales. CIW inspect care service providers under powers set out in the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA).

CIW therefore carries out its regulatory functions for the following purposes under subsection 31(2) of the FoIA:

- (2)(a) the purpose of ascertaining whether any person has failed to comply with the law.
- (2)(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.
- (2)(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
- (2)(d) the purpose of ascertaining the fitness and competence of registered persons to carry on regulated activities for which they are, or are seeking to be, registered.
- (2)(j) the purpose of protecting persons other than persons at work against risk to health & safety arising out of or in connection with actions of persons at work.

We believe disclosing the inspections notes and the evidence submitted by the service provider to CIW would prejudice CIW's ability to exercise the functions listed above as these functions are all achieved through inspection of regulated services and disclosure of the information would impact or undermine CIW's ability to carry out inspections effectively, for the following reasons:

- Inspection notes record the inspectors' interactions with people working at or using the service. Where CIW inspectors interview, talk to, or communicate with people to receive their views and experiences of the service, there is an expectation of confidentiality. People can feel reluctant or concerned about engaging with CIW inspectors due to concerns about their confidentiality and privacy. Disclosing that information would therefore be likely to deter individuals from communicating fully and frankly with CIW for the purpose of inspection. This would undermine CIW's powers under RISCA to interview persons in private and obtain a wide range of information for the purpose of inspection, thereby prejudicing CIW's ability to exercise its functions for the purposes under subsection 31(2) identified above.
- Inspection notes record the inspector's observations of the care being delivered to people using the service at the time of the inspection. Even if the notes are redacted to protect the identity of those persons, there will still be a significant possibility that public disclosure of the information would result in identification. Disclosure of the information is therefore likely to make people concerned about their care being observed by CIW inspectors due to an increased concern about intrusiveness and confidentiality and so would be reluctant to allow inspectors to do so. This would make it more difficult for CIW inspectors to observe and inspect the delivery of care in future, thereby prejudicing CIW's ability to exercise its functions for the purposes under subsection 31(2) identified above.
- Inspection notes also include information provided to CIW outside of the inspection where this information results in areas of focus for the inspection. This includes details of concerns raised by people who use services, by their relatives or by staff of the services, as well as information shared by professionals or other regulators and information shared by the service provider. People can feel reluctant or concerned about coming forward to CIW to share their experiences if they have concerns about their confidentiality and privacy. CIW assures people the information they share with us will be treated in confidence. Even if identification does not occur, people who have shared information with CIW are likely to feel concerned about the risk of identification. Disclosing this information would be likely to discourage third parties from sharing information with CIW if they perceive information would be disclosed into the public domain under FoIA. This would prejudice CIW's relationship with them and obstruct CIW's ability to obtain a wide range of information to inform inspections. This in turn would make it more difficult to take enforcement action where necessary, thereby prejudicing CIW's ability to exercise its functions for the purposes under subsection 31(2) identified above.
- Notes made by inspectors for the purpose of inspection are intended as an aide memoire for their use in reaching and recording their judgements. They are not a full and accurate reflection of the inspection findings. The information will not have been subject to the factual accuracy and challenge process prior to disclosure, nor been triangulated with other information collected. CIW does not disclose information about services collected for the purpose of inspection which has not been through these processes. Disclosing these records publicly would therefore be likely to

undermine CIW's commitment to fairness and factual accuracy, which is important to its credibility and effectiveness as a regulator and would likely to detract from CIW's considered and evidenced findings, as published in the inspection report, thereby prejudicing CIW's ability to exercise its functions for the purposes under subsection 31(2) identified above.

- Supporting evidence submitted by the service provider for the purpose of inspection will contain sensitive information about the service, people who use the service and its staff. This information is collected under CIW's powers under RISCA to inform CIW's assessment and conclusions. Disclosing this information into the public domain could likely result in providers being reluctant to share full information with CIW in the future as they would feel conflicted with their responsibility to protect sensitive information about their staff and people who use their service. This would undermine CIW's ability to carry out a full assessment of a service, thereby prejudicing CIW's ability to exercise its functions for the purposes under subsection 31(2) identified above.

Public interest test

Sections 31 is subject to the public interest test. This means the public interest in withholding the requested information must outweigh the public interest in disclosure.

Public interest in disclosing the information:

- There is a public interest in CIW being open and transparent in the way we carry out our regulatory functions.
- There is a public interest in knowing that regulated services provide good quality safe standards of care.

Public interest in withholding the information:

- There is a public interest in avoiding prejudice to CIW's regulatory functions in determining whether registered care providers are compliant with the relevant standards and regulations.
- There is public interest in ensuring that people's confidentiality is protected when they engage, share information, or raise concerns, with CIW.

Balance of the public interest:

CIW considers that, on balance, the public interest is in favour of withholding the requested information. This is because the public interest in transparency is outweighed by the public interest in maintaining the integrity and effectiveness of CIW's regulatory function for the purpose of protecting the safety and welfare of people who use care services, and the duty to protect the confidentiality of people who engage, share information, or raise concerns, with CIW.

CIW believes the public interest in knowing that services provide good quality safe care is met by the publishing of our resulting inspection reports. The information requested in this instance relates to an inspection that took place in 2021. Subsequent inspections of this service have since taken place and we therefore believe the public interest in information relating to the inspection to which the information requested relates is significantly reduced.

Section 41(1) 'Information provided in confidence'

Section 41 of the Freedom of Information Act (FOIA) sets out an exemption from the right to know, where the information was provided to the public authority in confidence.

Section 41(1) states:

- (1) *"Information is exempt information if –*
- a) it was obtained by the public authority from any other person (including another public authority), and*
 - b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*

When determining if disclosure would constitute a breach of confidence, we must consider;

- whether the information has the quality of confidence,
- whether it was imparted in circumstances importing an obligation of confidence, and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

CIW inspection notes and evidence contain information provided to CIW by third parties in confidence. This includes discussion with staff and people who use services during inspection, concerns raised by people outside of inspection, information shared with CIW by professionals or other regulators, and information submitted to CIW by the service provider. Where people provide information about a service to CIW for the purpose of an inspection, or at any other time, this is done with an expectation of confidentiality.

CIW inspectors assure people who engage with them during inspections these discussions will remain confidential. CIW assures the public they may raise concerns with us in confidence and we will always maintain this confidentiality where possible. This is set out in our 'Providing Feedback about Care Services Guide' on our website. Where professionals and other regulators share information with CIW, this is done under information sharing agreements which set out the confidentiality expectations in respect of the information shared.

Where service providers are required to provide information to CIW about their service, staff and the people who use their services, this is done for the specific purposes for which the information is requested under CIW's powers to obtain this information. There would be no expectation that sensitive information provided to CIW for this purpose would be publicly disclosed by CIW.

We must maintain the confidentiality of people who raise concerns with CIW and those who engage with or share information with CIW, so people can feel safe to do so, particularly where those individuals have explicitly requested anonymity. This, we believe, imports an obligation of confidence in respect of any information they provide to CIW. Public disclosure of any information shared by those people for these purposes would therefore constitute a breach of confidence actionable by them and so we consider this exemption is engaged.

Section 41 is an absolute exemption and not subject to the public interest test.

Section 40(2) Personal Data

Section 40(2) of the 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 2018 ('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, a large proportion of the information contained within CIW inspection notes and the evidence submitted by the provider for the purpose of inspection, is third party personal data. Some of this would be very sensitive personal data about people who use care services, or of the staff of those services. CIW believe that's even if this information is redacted to protect the identities of the people who use or work in the services, there is still significant risk that people could be identified if this information is placed into the public domain. This is because people within the public who have existing knowledge of the service could still identify individuals from the redacted information.

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".

Legitimate Interest

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 interest

CIW recognises there may be a legitimate interest in the disclosure of inspection notes and evidence in relation to the inspection of a care service so that people can be assured about the quality and safety of those care services. Freedom of information requests are treated as applicant and motive blind, however, we recognise the requester has a legitimate interest in requesting this information, as set out within the request.

2. Is disclosure necessary?

CIW do not believe disclosure of personal data of the people who use or work at regulated services is necessary in this case. The findings of CIW inspections are available to the public via the resulting inspection reports. Furthermore, as the information requested relates to a CIW inspection that took place in 2021 and there have been further inspections of the service since, the legitimate interest to the public in this information is therefore reduced. CIW do not believe public disclosure of this information is necessary to meet the requester's own legitimate interests as we do not believe the reasons given would require the public disclosure of personal data.

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

When carrying out inspections at care services, CIW assure the service provider, staff, and residents/users any personal data they provide for evidence during an inspection will always remain confidential where possible. People would not expect any personal data shared with CIW during an inspection to be disclosed to the public. Such disclosure may have potential to cause unjustified harm or distress to them. As we believe the legitimate interest in care services' quality and safety, and the legitimate interests of the requester, can be met by other means, we believe the duty to maintain the confidentiality of people's personal data outweighs this legitimate interest. Additionally, if people are not confident their identities will be protected this could prevent them from providing their personal data during future inspections and therefore hinder CIW's ability to gather evidence when undertaking its regulatory role in improving the quality and safety of services for the well-being of the people of Wales.

We therefore conclude the legitimate interests of the public and of the requester in disclosure of personal data collected for the purpose of inspection do not outweigh the interests and rights of the people whose personal data is gathered during the inspection.

As release of the information would not therefore 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.