

12 March 2024

Dear

ATISN 20253 – Swansea Maternity Services

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 22 February 2024.

You referred to the letter that was sent in February 2024 to Margaret Bowron KC, the Minister for Health & Social Services, and the Health & Social Services Department (Welsh Government) and requested the following:

- 1. Any internal or external emails/messages/WhatsApp/text messages/letters held by Welsh Government relating to this letter.*
- 2. Minutes of any meetings held by Welsh Government where this letter was discussed. This could be internal meetings or meetings with external partners.*
- 3. A copy of any written advice given to Eluned Morgan regarding the letter.*

Our Response

1. The Welsh government does hold information within the scope of your request. Document 1 in **Annex 1** attached to this letter is a chain of emails between you and your husband, and the Welsh Government relating to the February 2024 letter to Margaret Bowron KC.

We have concluded that some of the information caught within these emails is exempt from disclosure under Section 40 of the Freedom of Information Act. As a result, you will see that this information has been redacted. The reasons for applying this exemption are set out in **annex 2** to this letter.

2. We do not hold any minutes (or other records) of meetings held by the Welsh Government where the letter to Margaret Bowron KC was discussed.
3. Documents 2 and 3 in **Annex 1** are extracts from Ministerial briefing that was sent to Ministers, including Eluned Morgan MS, Minister for Health & Social Services. This information would normally be exempt from release under section 35 of the Freedom of Information Act, but in this instance, we believe that the public interest in maintaining the exemption does not outweigh the public interest in disclosure; therefore we are releasing the information.

We have decided that some of the information caught within these emails is exempt from disclosure under Section 40 of the Freedom of Information Act. As a result, you will see that this information has been redacted. The reasons for applying this exemption are set out in **annex 2** to this letter.

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,

Document 1

From: <redacted s40(1)> (HSS - NHS Workforce & Operations)

Sent: Wednesday, February 21, 2024 4:54 PM

To: <redacted s40(1)>

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Hello <redacted s40(1)>

We have tried to answer your questions as helpfully as possible. If I may summarise and (where possible) clarify further:

1. Was the Minister briefed that 29 affected families/victims had called for the KC to stand down?

The specific information you have requested would be exempt if you had requested it under the Freedom of Information Act (section 35) as it concerns the operation of a Ministerial Private Office. However, in the spirit of openness and trying to be as helpful as we can, we have confirmed that the Minister has been briefed about your views on the appointment of Margaret Bowron KC. You have told us that the 28 other affected families share your views, and therefore I am satisfied that the Minister has been briefed about the collective view of the affected families.

2. Was the Minister shown the letter from the 29 affected families/victims to the KC?

The specific information you have requested would be exempt if you had requested it under the Freedom of Information Act (section 35), as it concerns the operation of a Ministerial Private Office; therefore I feel that it would be inappropriate for me to provide the information by another route.

3. Does the Minister believe the views of 29 affected families/victims should be ignored?

The views of the 29 affected families have not been ignored. Their views have been fully considered. However, after careful consideration, the Minister has been advised that in this instance it would be wrong for her accede to the families' request because it would mean impugning the integrity and the independence of King's Counsel when there is no good reason for so doing.

4. Does the Minister consider it appropriate for affected families/victims to be excluded in the setting up of an independent maternity review?

The purpose of the Independent Review is to establish whether Swansea Bay's maternity and neonatal services are safe, and whether any improvements could be made. It is very important that the affected families are not excluded from the review process, and I am sure that the review panel will want to hear your views and

experiences – as well as those of any other affected families. However, to the extent that your question infers that the affected families have been excluded because we have advised the Minister not to impugn the integrity and the independence of Kings Counsel, then I refer you to the answer we have provided to question 3 above.

Given the impasse we appear to have reached on this particular issue, it seems likely that neither of us will achieve anything further by prolonging our correspondence on the matter. This means that if you do send further emails or letters to the Welsh Government on this same subject, it is possible that we may file them for information and not respond. This is not because we wish to be rude. It is simply that we receive a large volume of correspondence, and we have nothing further to add to the responses that we have already provided.

Kind regards,

<redacted s40(1)>

<redacted s40(1)>

[Y Grŵp Iechyd a Gwasanaethau Cymdeithasol](#) | Health and Social Services Group
[Llywodraeth Cymru](#) | Welsh Government

From: <redacted s40(1)>

Sent: Tuesday, February 20, 2024 1:19 PM

To: HSS – Government Business Team Mailbox, <redacted s40(1)>

Cc: Correspondence mail - EM

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Hello <redacted s40(1)>,

You have had 24 hours to answer the below questions in the email (timestamped 19 February 2024 12:39). When can we expect the answers?

Your inability to answer even simple questions reflects very poorly on your department and the Minister herself.

Once again for your convenience I have pasted the questions again.

1. Was the Minister briefed that 29 affected families/victims had called for the KC to stand down?
2. Was the Minister shown the letter from the 29 affected families/victims to the KC?
3. Does the Minister believe the views of 29 affected families/victims should be ignored?
4. Does the Minister consider it appropriate for affected families/victims to be excluded in the setting up of an independent maternity review?

Kind regards

<redacted s40(1)> and <redacted s40(1)>

From: <redacted s40(1)>

Sent: Monday, February 19, 2024 12:39:17 PM

To: HSS Government Business Team Mailbox

Cc: Correspondence – Eluned Morgan

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Hello <redacted s40(1)>,

Your response (timestamped 16 February 2024 12:29) did not answer the questions we asked.

Please answer the questions. Once again copied here:

1. Was the Minister briefed that 29 affected families/victims had called for the KC to stand down?
2. Was the Minister shown the letter from the 29 affected families/victims to the KC?
3. Does the Minister believe the views of 29 affected families/victims should be ignored?
4. Does the Minister consider it appropriate for affected families/victims to be excluded in the setting up of an independent maternity review?

They are easy to read and understand.

Kind regards

<redacted s40(1)> and <redacted s40(1)>

From: <redacted s40(1)> on behalf of HSS Government Business Team Mailbox

Sent: Monday, February 19, 2024 12:32:48 PM

To: <redacted s40(1)>

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Dear <redacted s40(1)>

We have responded to your email of 15 February. Our response is repeated in the chain below (timestamped 16 February 2024 12:29).

I am sorry if you are not satisfied with our response. We have nothing further to add at this time.

Kind regards,

[Tîm Busnes y Llywodraeth | Government Business Team](#)
[Y Grŵp Iechyd a Gwasanaethau Cymdeithasol | Health and Social Services Group](#)
[Llywodraeth Cymru | Welsh Government](#)

From: <redacted s40(1)>

Sent: Friday, February 16, 2024 12:41 PM

To: HSS – Government Business Team Mailbox

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Hello <redacted s40(1)>,

Thank you for your email and explanation. However you have failed to answer the questions. For clarity I have copied them below.

1. Was the Minister briefed that 29 affected families/victims had called for the KC to stand down?
2. Was the Minister shown the letter from the 29 affected families/victims to the KC?
3. Does the Minister believe the views of 29 affected families/victims should be ignored?
4. Does the Minister consider it appropriate for affected families/victims to be excluded in the setting up of an independent maternity review?

Please can you answer the questions.

<redacted s40(1)>

From: HSS – Government Business Team Mailbox

Sent: 16 February 2024 12:29

To: <redacted s40(1)>

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Dear <redacted s40(1)>

If there had been a good reason for the Minister to impugn the integrity and the independence of King's Counsel, then it would not have mattered whether one affected family/victim had called for Margaret Bowron KC to stand down, or whether a hundred affected families/victims had called for her to stand down. However, in this instance, as stated in our previous response, there is no good reason for the Minister to impugn the integrity and the independence of King's Counsel.

As stated previously, the purpose of the Independent Review is to establish whether Swansea Bay's maternity and neonatal services are safe, and whether any improvements can be made. The review, and the appointment of Margaret Bowron KC, are primarily the responsibility of the health board. As you are aware, the escalation status of maternity and neonatal services at Swansea Bay has been raised to "Enhanced Monitoring". This ensures that the health board has the comprehensive support it needs to deliver the improvement plans it has developed. It also means that the Minister's officials are well placed to assess progress.

Kind regards,

[Tîm Busnes y Llywodraeth](#) | Government Business Team
[Y Grŵp Iechyd a Gwasanaethau Cymdeithasol](#) | Health and Social Services Group
[Llywodraeth Cymru](#) | Welsh Government

From: <redacted s40(1)>

Sent: Thursday, February 15, 2024 2:51 PM

To: HSS – Government Business Team Mailbox

Subject: RE: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Hello,

Thank you for your email.

Can you confirm:

5. Was the Minister briefed that 29 affected families/victims had called for the KC to stand down?
6. Was the Minister shown the letter from the 29 affected families/victims to the KC?
7. Does the Minister believe the views of 29 affected families/victims should be ignored?
8. Does the Minister consider it appropriate for affected families/victims to be excluded in the setting up of an independent maternity review?

Kind regards

<redacted s40(1)>

From: <redacted s40(1)> on behalf of HSS – Government Business Team Mailbox

Sent: Thursday, February 15, 2024 1:44:41 PM

To: <redacted s40(1)>

Subject: TO/EM/00412/24 RE: Swansea Bay University Health Board - Maternity and Neonatal review

Dear <redacted s40(1)> and <redacted s40(1)>

Thank you for your email to Eluned Morgan MS, Minister for Health & Social Services. I have been asked to reply on her behalf.

I am sorry if you are disappointed to receive a response from an official, rather than direct from the Minister. More information on the way that the Welsh Government responds to correspondence is available on our web pages at: [Contacting Welsh Government ministers | GOV.WALES](#)

The Minister has been briefed about your views on the appointment of Margaret Bowron KC to oversee an independent review of maternity and neonatal services. The Minister has also been advised that it would be wrong for her to impugn the integrity and the independence of King's Counsel when there is no good reason for so doing.

The purpose of the Independent Review is to establish whether Swansea Bay's maternity and neonatal services are safe, and whether any improvements could be made.

Kind regards,

Tîm Busnes y Llywodraeth | Government Business Team
Y Grŵp Iechyd a Gwasanaethau Cymdeithasol | Health and Social Services Group
Llywodraeth Cymru | Welsh Government

From: <redacted s40(1)>
Sent: Wednesday, February 14, 2024 1:21 PM
To: Correspondence mail - EM
Subject: Swansea Bay University Health Board - Maternity and Neonatal review

Good afternoon Minister,

This morning a letter from 29 affected families / victims of the Swansea maternity scandal has been sent to the Chair of the Oversight panel for this review.

The letter is attached and asks for Margaret Bowron KC to stand down for the reasons stated in the letter.

Any maternity and neonatal review needs the support of affected families and victims to be taken seriously and accepted. For 29 families to ask her to stand down is a clear indication that she does not have this support and mandate to Chair the review.

We have asked you before to step in and remove responsibility for the review from Swansea Bay University Health Board. Your officials have refused to do this, without I presume even informing you of the request. It is time for you to take direct responsibility for this very dangerous and unacceptable situation.

We look forward to hearing from you personally as soon as possible.

<redacted s40(1)> and <redacted s40(1)>

Document 2

Extract from Ministerial briefing 2 Feb 2024

Swansea Bay UHB: Independent Review of Maternity and Neonatal Services - Updated

Background

<redacted>

Coinciding with their board meeting, the health board announced it has appointed Margaret Bowron KC as chair of the panel. Her appointment has drawn criticism from the families affected.

The draft Terms of Reference for the Review will be considered by the Oversight Panel and will be amended in order to enable a robust review of the services in a

way that allows necessary lessons to be learnt and for there to be confidence that the Health Board can and will deliver safe care in future. The clinical review team will start its work as soon as the final Terms of Reference have been approved. The review is expected to take a minimum of ten months to complete.

<redacted>

Document 2

Extract from Ministerial briefing 6 Feb 2024

Swansea Bay – paragraph 4, ‘Her appointment has drawn criticism from the families affected.’ – What is the nature of the criticism?

One of the families has raised concerns with the Minister and on social media about the independence of the KC appointed, they have stated that:

- They have questioned the independence of the appointment given she has undertaken defence work for Welsh health boards.
- They believe she may have previously represented the health board.
- They are concerned that the law firm involved in her appointment has in their opinion an obvious conflict of interest.
- That Swansea Bay have indicated that Welsh Government were involved in the appointment.

Suggested additional lines to take:

- I am not surprised that Margaret Bowron KC has undertaken defence work for Welsh health boards, that is what her role involves. I would expect that her skills and expertise are such that she is skilled in leading such a review. When any barrister, not just Margaret Bowron KC, undertakes defence work for a Welsh health board, they have an overriding duty to the Court to act with independence in the interests of justice. He or she must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court. These are all useful qualities for the Chair of an independent Oversight Panel.
- We do not think that she has represented Swansea Bay, the health board will confirm today, however she did represent the previous organisation – ABMU.
- The law firm engaged in the appointment are a highly respected and independent company – They operate in line with their professional code of conduct.
- The appointment of the Chair was done so in an independent manner and Welsh Government were not involved or consulted about that appointment and were only informally made aware of the appointment just before the formal announcement.

Provided by [Redacted]: 5 February 2024

Annex 2

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 caught by your request 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

Your request includes some emails which were caught by your request. I have not identified any legitimate interest that you may have in knowing the identities of those individuals named within the emails.

2. Is disclosure necessary?

We do not believe disclosure of the identities of those involved would allow any greater understanding of the draft plan.

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

As we do not believe disclosure of this personal data is necessary, there is no requirement on us to undertake a test to balance the legitimate interests against the right of individuals, as the fundamental rights and freedoms provided by the DPA are not being challenged.