

23 April 2024

Dear

ATISN 20391

You asked for the following information:

For 2018/19, 2019/20, 2020/21, 2021/22 and 2022/23:

1. Total FTE Headcount on 31/03 for each financial year
2. Amount spent on EDI training per financial year
3. Number of formal grievances raised in this period where the discrimination relates to a protected characteristic under the Equalities Act 2010
4. Number of formal grievances raised in this period where the main cause cited is bullying or harassment but excludes all cases related to the previous category of protected characteristics under the Equalities Act 2010
5. Number of employment law cases that commenced in this period where the discrimination relates to a protected characteristic under the Equalities Act 2010
6. Number of employment law cases that commenced in this period where the main cause cited is bullying or harassment but excludes all cases related to the previous category of protected characteristics under the Equalities Act 2010
7. Total amount spent on either awarded payments or settlement agreements in this period where the discrimination relates to a protected characteristic under the Equalities Act 2010
8. Total amount spent on either awarded payments or settlement agreements in this period where the main cause cited is bullying or harassment but excludes all cases related to the previous category of protected characteristics under the Equalities Act 2010.

Our response:

1. FTE headcount:

2018-19	2019-20	2020-21	2021-22	2022-23
5083.0	5306.6	5409.6	5571.4	5681.2

*This is the figure for permanent and temporary staff used in the WG Annual Accounts and excludes Special Advisors which are listed separately in the Accounts.

2. Total expenditure on EDI training from the corporate learning and development budget for the following financial years:

2018/19: £30,750

2019/20: £23,096.45

2020/21: £6,400

2021/22: £25,288

2022/23: £29,997.75

3. I have concluded the requested information under questions 3, 5 & 7 is exempt under Section 40(2) of the Freedom of Information Act 2000. I have set out at Annex 1 my reasons for non-disclosure.

4. 2018/19 = 5; 2019/20 = 4; 2020-2021=5; 2021/2022=0; 2022/23=6*

*Figures include formal grievances and dignity at work complaints within scope of the request

5. As question 3

6. 0

7. As questions 3 and 5 above

8. 0

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 e-mail: 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

Telephone: 0303 123 1113

Website: www.ico.org.uk

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

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (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 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. I have concluded this relates to information about individuals/protected characteristics and award amounts which given the low number of cases could lead to the identification of the individuals concerned/their personal 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, 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:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question; and
3. 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 Test

The Welsh Government recognises there is a legitimate interest in the information in question being disclosed. However, we do not believe there is any legitimate reason why what would constitute the personal data of individuals would need to be released.

2. Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request - we do not believe it is necessary to disclose the

number of cases which are low in number and by the nature of the other related/linked questions, were information disclosed, could lead to the identification of the individuals.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, as release of the information would not 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.