

6 February 2025

Dear

### **ATISN 23243 – eHarley Street Primary Care Solutions**

Thank you for your request to the Welsh Government for information under the Freedom of Information Act (2000) received on 9 January 2025 relating to eHarley Street Primary Care Solutions. We have interpreted your request as follows :

1. *For the period of 02/09/2024 and 09/01/2025*

*Please provide all correspondence between the Welsh Government, including Ministers and civil servants and Aneurin Bevan University Health Board regarding the company, eHarley Street Primary Care Solutions, sometimes referred to as eHarley Street.*

### **Our Response**

The information we hold is attached.

We have concluded that some of the information requested is exempt from disclosure under the following sections of the Freedom of Information Act:

- Section 40(2) – Personal Information of the Freedom of Information Act.

An explanation of our application of this exemption is set out at Annex 1 to this letter.

Some information has been withheld under Section 43(2) of the Freedom of Information Act (FOIA). An explanation is attached at Annex 2

### **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

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/documents 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 content of the emails.

### **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.

I have concluded that there is a reasonable expectation that the identity of the living individuals named in the correspondence would not be made public. It is my view, therefore, that disclosure of the redacted information would breach the first data protection principle, and thus is exempt from release under section 40 of the FOI Act

## **Annex 2**

### **Engagement of Section 43(2)**

Section 43(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Officials have carefully considered all of the information captured by this request and consider that the information in question should be exempt under Section 43(2) of the Freedom of Information Act.

Section 43(2) is a public interest exemption. This means that in order to withhold information under its provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

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

Release of this information would give a complete picture of information held.

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

The information being withheld contains market sensitive information, which could have a detrimental effect on the commercial interests of the contractor partnership, its commercial standing with suppliers and its ongoing ability to fulfil contractual obligations to provide NHS services.

### **Conclusion**

Whilst recognising that a public interest argument for disclosure on grounds of completeness could be made, we consider that the public interest argument of prevention of detriment on commercial interests in withholding the information, outweighs that in releasing it in this instance.