

22 July 2026

Dear

ATISN 27167

Thank you for your request which I received on 1 July. You asked whether a discussion has taken place with a member of staff, and whether they had been informed that a complaint had been raised about their conduct.

Our response

As you are asking for the personal data of another person, your request is a Freedom of Information (Fol) request rather than a Data Subject Access Request (a DSAR would be a request for your personal data).

I can neither confirm or deny that we hold any such information under section 40(5) of the Fol Act. The grounds for applying this exemption are set out in full at Annex A 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 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

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

Application of exemptions/exceptions

The Freedom of information Act/Environmental Information Regulations 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.

I have decided to withhold the following information:

Steps taken by Welsh Government Human Resources regarding your complaint about a Welsh Government member of staff; confirmation of whether a discussion has taken place with them; and whether they had been informed that a complaint had been raised about their conduct.

This Annex sets out the reasons for the engagement of section 40(5) of the Freedom of Information Act.

Engagement of section 40(5) – Personal Data

Section 40(5) of the Freedom of Information Act 2000 (FOIA), together with the conditions in section 40(2) and 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 that this relates to the name (and other associated personal information) of the Welsh Government employee referenced in your correspondence.

Under section 40(5)(b) of the FOIA, the duty on a public authority to confirm or deny that it holds recorded information caught by a request does not arise if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

- (i) would contravene any of the data protection principles,

The duty to neither confirm nor deny under this section of the Act arises if confirmation as to whether the requested information is or isn’t held would breach any of the data protection principles contained Article 5 of the GDPRs. It is our opinion that to confirm or deny we hold any recorded information caught by this request would be placing personal data into the public arena in contravention of the data protection principles. 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) of the GDPRs. 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;
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 that there is a legitimate interest on the part of a complainant in understanding how concerns they have raised have been considered. There is also a broader public interest in ensuring that concerns regarding the conduct of public servants are considered appropriately and in accordance with relevant policies and procedures.

2. Is disclosure necessary?

However, the Welsh Government does not consider it necessary to confirm or deny whether any specific HR action has been taken in relation to an identifiable employee, whether discussions have taken place with them, or whether they have been informed of a complaint.

3. The Balancing Test

Confirmation or denial that such information is held would reveal information relating to an individual's employment affairs and therefore their personal data. All employees would have a reasonable expectation that information relating to any HR consideration, investigation, discussion or action concerning them would be treated confidentially by their employer. Disclosure under the Freedom of Information Act, including confirming or denying the information is held, is disclosure to the world at large. The Welsh Government considers that the employee's rights and freedoms, and their right to have their personal data protected, outweigh any legitimate interest in disclosure of the information requested.

Because disclosure would not be lawful under Article 6(1)(f) UK GDPR, and no other lawful basis is considered to apply, disclosure would breach the first data protection principle. The information is therefore exempt for the provision to confirm or deny whether we hold it. The Information Commissioners office is of the view that Section 40(5), in that confirming or denying holding third-party personal data would contravene the data protection principles, is an absolute exemption and is not subject to the public interest test.