

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.

I have decided to withhold the following information under section 38(1) (a) and (b):

- The names of third sector organisations listed within Nation of Sanctuary meeting agendas and minutes.

I have decided to withhold the following information under section 40(2) of the Freedom of Information Act:

- The names and job titles of individuals who either attended, contributed or sent their apologies to Nation of Sanctuary meetings and are therefore listed in the minutes. This exemption does not apply to members of the Senior Civil Service and elected officials.

This Annex sets out the reasons for the engagement of section(s) 38(1) and 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Engagement of section 38(1) (Health and Safety) of the Freedom of Information Act

The Information Commissioner's Guidance on s38 states (inter alia):

'Section 38 provides an exemption from disclosing information if it would endanger any individual (including the applicant, the supplier of the information or anyone else). The exemption does not necessarily deal with what are usually thought of as health and safety matters, such as establishing the cause of an accident.'

We have considered whether the disclosure of related information would, or would be likely to – (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual.

The Welsh Government believes that disclosing the names of organisations working on Nation of Sanctuary policy would be likely to endanger the physical or mental health or safety of individuals working for those organisations. This could arise from harassment online or offline, or from physical confrontations, as well as the mental health stress that would be likely to arise from public disclosure for those affected. It is important to note that FOIA disclosures are public and such harm could be perpetrated by anyone, not necessarily the requestor. We have therefore consulted relevant third parties to assess concerns and to ascertain whether the endangerment

of individuals' physical or mental health or safety would or would be likely to be caused by disclosure.

Section 38 is a 'qualified exemption' which is subject to the Public Interest Test.

In order to satisfy the public interest test in relation to the exemption, it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

Public interest arguments in favour of disclosure of information

The Welsh Government acknowledges that disclosure of information about engagement between Ministers and other organisations would have some public interest and could support increased public understanding of related issues which have been considered over time. Disclosure could provide additional transparency and increased public awareness about the Welsh Government's work in this area.

Public interest arguments in favour of withholding

Officials have received evidence detailing how involvement with the Nation of Sanctuary policy has led to misinformation, targeting and abuse. This clearly evidences the harms that releasing this information would be likely to have on individuals, organisations and those they support. Third sector organisations have been targeted for abuse, both online and via threats, and the disclosure of this information is likely to escalate issues, resulting in the endangerment of both the physical/mental health of funded organisation staff, as well as endangering their safety. The Charity Commission recently (July 2026) published a report detailing the related increased hostility experienced by third sector organisations.

Balance of public interest test

In this case, we have decided that the health and safety risks of disclosure outweigh the public interest in disclosure for the reasons set out above. The requested information will therefore be withheld.

Engagement of section 40(2) (Personal Data) of the Freedom of Information Act

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 that, in this instance, the information requested 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:

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 there may be a general interest in understanding who attended the relevant Nation of Sanctuary meetings (to help understand the reason for their involvement). However, we are not aware of any specific legitimate

interest which requires disclosure of the names or job titles of the individuals, in order to follow and understand the information in the disclosed documents, with the exception of elected officials who had a clear public-facing role, and members of the Senior Civil Service, with a reduced expectation of privacy in the conduct of their professional responsibilities.

2. Is disclosure necessary?

The Welsh Government does not consider the disclosure of names and job titles of individuals listed within meeting minutes is necessary to meet any legitimate test. Disclosure of the full personal data is unlikely to be of interest to the wider public. The information within the documents released can be understood without identifying individual participants.

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 the Freedom of Information Act, 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.